

# UNION BUDGET 2017



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## Contents

ECONOMIC SURVEY 2016-17 .....	3
DIRECT TAXES .....	6
INDIVIDUALS / HUF .....	6
CAPITAL GAINS .....	7
TAX DEDUCTION (TDS) / TAX COLLECTION (TCS) .....	9
CHARITABLE TRUST/ INSTITUTIONS / POLITICAL PARTIES .....	10
OTHER CHANGES IN INCOME TAX PROVISIONS .....	11
CORPORATE TAX.....	15
ASSESSMENT PROCEDURES.....	16
INTERNATIONAL TAXATION .....	17
TRANSFER PRICING.....	19
INDIRECT TAXES.....	20
CUSTOMS .....	20
CENTRAL EXCISE .....	21
SERVICE TAX .....	22
GOODS AND SERVICES TAX (GST) .....	22
COMPANY LAW.....	23
FEMA UPDATES.....	26
ACCOUNTING AND AUDITING UPDATES .....	30
SECTORAL IMPACT.....	32
MISCELLANEOUS.....	36

## ECONOMIC SURVEY 2016-17

Economic Survey is an annual document which outlines the broad direction of the budget and economic performance of the Country over the last fiscal period. In simple terms it is report card of Indian Economy for the last fiscal period.

### HIGHLIGHTS

- Indian Economy GDP growth rate has been projected at 6.75 to 7.50 percent in 2017-18, Post-demonetization. GST and other structural reforms, should take the trend of the growth rate to 8-10 per cent, in the coming years.
- For 2016-17 the GDP growth rate may be reduced to 6.5% to 6.75%, reducing it by 0.25% to 0.5% due to demonetization.
- India has budgeted to control fiscal deficit to 3.5 percent of GDP in 2016-17, and bring it down to 3.2 percent next year (revised during budget speech). Implementation of wage hike and muted tax receipts to put pressure on fiscal deficit in 2017-18
- Growth rate of the industrial sector got moderated at 5.2% in 2016-17 from 7.4% in 2015-16
- The current account deficit narrowed in the first half of 2016-17 to 0.3 % of GDP.
- FDI reform measures were implemented, allowing India to become one of the world's largest recipients of FDI. The country's foreign exchange reserves are at the highest ever level of about \$360 billion at the end of Dec 2016 (at end of Jan 16 it was \$ 350 billion).
- On account of better monsoon rains, growth in the agriculture and allied sector is estimated at 4.1% in 2016-17, significantly higher than 1.2% in 2015-16
- Service sector estimated to grow at 8.8% in 2016-17 (FY 2015-16: 8.9%)
- Survey indicates there should be lowering of tax rates, stamp duty and to accelerate the time lines for lowering corporate taxes.
- India has 7 taxpayers for every 100 voters ranking us 13th amongst 18 of our democratic G-20 peers
- Evidence from satellite data indicates that, Bengaluru and Jaipur collect only around 5% to 20% of their potential property taxes.

### DEMONETISATION

- The Economic Survey points out that demonetisation will have both short-term costs and long-term benefits. Briefly, the costs include a contraction in cash money supply and subsequent, albeit temporary, slowdown in GDP growth; and benefits include increased digitalization, greater tax compliance and a reduction in real estate prices, which could increase long-run tax revenue collections and GDP growth.
- Demonetisation to affect growth rate by 0.25-0.5 per cent.
- The remonetisation will ensure that the cash squeeze is eliminated by April 2017

- The weighted average price of real estate in eight major cities which was already on a declining trend fell further after November 8, 2016 with the announcement of demonetisation
- Government windfall arising from unreturned notes should be deployed towards capital spending.
- Demonetisation may affect supplies of certain agricultural products like sugar, milk, potatoes and onions

### COMPARISON

- India's Trade-GDP Ratio now greater than China, Says Economic Survey 2016-2017. China has lost its dominant position in apparels and leather manufacturing due to rising labour costs, thus creating an opportunity for India. To retain its domination from competitors like Vietnam and Bangladesh, India will require easing restrictions on labour regulations, negotiating FTAs with major partners such as the EU and UK.
- Brexit and the US elections may herald a tectonic shift, forebodingly laden with darker possibilities for the global, and even the Indian, economy.

### UNIVERSAL BASIC INCOME (UBI):

The Economic Survey 2016-17 has advocated the concept of Universal Basic Income (UBI) model as a social security net to replace the existing range of subsidies and other schemes aimed at combating poverty. A UBI scheme is meant to assure a fixed monthly income to all individuals based purely on their status as citizens of the country. Citizens would receive this amount

irrespective of other income. The Survey however did caution that political challenges could derail the proper implementation of the UBI scheme by continuing subsidies. The UBI if implemented may cost 4.2 percent of GDP

### INDIAN MARKETS PERFORMANCE

Indian markets recorded modest growth of 1.95 – 3 per cent (Sensex was up by 1.95 per cent while Nifty was higher by 3.0 per cent) for the calendar year 2016 as compared to losses registered in 2015.

### FOREIGN PORTFOLIO INVESTMENTS

For the first time since the meltdown of 2008, Net Foreign Portfolio Investments (FPI) have turned negative (implying that there was an outflow from the Indian markets) to the tune of Rs. 23,079 cores.

### EXTERNAL DEBT

At end-September 2016, India's external debt stock stood at US\$ 484.3 billion, recording a decline of US\$ 0.8 billion over the level at end-March 2016, mainly due to a reduction in commercial borrowings and short term external debt. However, on a sequential basis, total external debt at end September 2016 increased by US\$ 4.8 billion from the end-June 2016 level.



## FISCAL DEFICIT

- Expecting fiscal windfall from Pradhan Mantri Garib Kalyan Yojana and low oil prices
- Fiscal gains from Goods and Services Tax (GST) will take time to realise
- The 13-year old Fiscal Responsibility and Budget Management (FRBM) Act needs to be modified to provide fiscal policy direction for “the India of tomorrow”

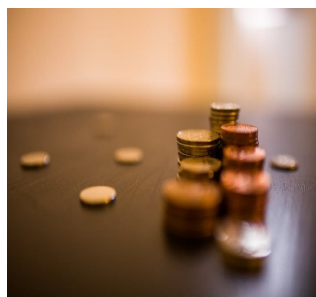
## ISSUES

### TWIN BALANCE SHEET (TBS) PROBLEM

Since no clear progress is yet visible in tackling the twin balance sheet problem, private investment is unlikely to recover significantly from the levels of FY2017. Some of this weakness could be offset through higher public investment, but that would depend on the stance of fiscal policy next year, which has to balance the short-term requirements of an economy recovering from demonetisation against the medium-term necessity of adhering to fiscal discipline – and the need to be seen as doing so. Over-leveraged companies and bad-loan-encumbered banks - using a decentralised approach leading to rise in NPAs while credit and investment are declining. A need for different approach with a centralised Public Sector Asset Rehabilitation Agency that could take charge of the largest, most difficult cases, and make politically tough decisions to reduce debt.

## TRADE POLICY

The environment for global trade policy has probably undergone a paradigm shift in the aftermath of Brexit and the US elections. These are likely to negatively influence macro-economic developments in the United States, and in particular the sharp rise in the dollar that is already under way. Since November 8, 2016, the dollar has appreciated by 5.3 percent by end December, before recovering to 3.1 percent in January 2017, in nominal terms against an index of partner countries. The history of US trade policy is clear that the most protectionist phase (mid to late 1980s) coincided with the sharp rise in the dollar in the wake of the tightening of monetary and relaxation of fiscal policy in that period.



## DIRECT TAXES

### INDIVIDUALS/HUF

#### SLAB RATES

The following are the changes in **Income tax rates** with respect to individual and HUF.

- i. The rates of income-tax in the case of every **individual (below 60years)** or HUF.

<u>Income slab</u>	<u>Old Rate</u>	<u>New Rate</u>
Upto Rs. 2,50,000	Nil	Nil
Rs. 2,50,001 to Rs. 5,00,000	10%	5%
Rs. 5,00,001 to Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

- ii. The rates of income-tax in the case of every **individual (60years or more and below 80years)**.

<u>Income slab</u>	<u>Old Rate</u>	<u>New Rate</u>
Upto Rs. 3,00,000	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	10%	5%
Rs. 5,00,001 to Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

- iii. The rates of income-tax in the case of every **individual (80 years or more)**.

<u>Income slab</u>	<u>Old Rate</u>	<u>New Rate</u>
Upto Rs. 5,00,000	Nil	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

Any assessee above a taxable income of Rs 5 lakhs would most certainly save Rs 12,500 in taxes every year due to reduction of tax rates from 10% to 5% in the first slab.

#### SURCHARGE - MODIFIED PROVISION:-

The provisions with respect to Surcharge has been modified as follows:

<u>Particulars</u>	<u>Old Provision</u>	<u>Modified Provision</u>
For Individuals, whose income exceeds Rs.50 lakhs but does not exceed Rs.1crore.	Nil	10%
For Individuals, whose income exceeds Rs.1 crore.	15%	15%

## REVISION IN REBATE U/S 87A - (MODIFICATION)

**Old Provision:** A rebate of up to Rs. 5,000/- was being provided from the income tax payable by a resident individual whose total income does not exceed Rs. 5,00,000.

**Modified Provision:** A rebate of up to Rs. 2,500/- will be provided from the income tax payable by a resident individual whose total income does not exceed Rs. 3,50,000.

## CAPITAL GAINS

### IMMOVABLE PROPERTY HOLDING PERIOD REDUCED FOR LONG TERM ASSET (MODIFICATION OF Sec 2(42A))

The holding period for an immovable property, being land or building or both, held by an assessee shall be reduced from thirty-six months to twenty-four months. Accordingly, the property held beyond 24 months qualify to be long term capital asset.

### CONVERSION OF PREFERENCE SHARES TO EQUITY (Modification of Sec 47)

Conversion of preference shares of a company into equity shares of that company is not considered as transfer, thus there is no liability to capital gains tax on such conversion.

(Modification of Sec 2(42A)).

On conversion of preference share of a company into its equity share, for computing the period of holding, the period of holding of preference share is also considered.

### (Modification of Sec 49)

On conversion of preference shares to equity shares, the cost of such equity shares shall be deemed to be that part of the cost of the preference shares in relation to such asset.

### CHANGE IN INDEX BASE

The base year for indexation for the purpose of computation of Capital Gains is proposed to be shifted from 01/04/1981 to 01/04/2001 (proposed base year) for all classes of assets. Henceforth for assets acquired prior to 1/4/2001 the Fair market value of the such asset as on 1 / 4/ 2001 will be the deemed cost.

### CAPITAL GAINS ON JOINT DEVELOPEMENT AGREEMENT (JDA)

(Modification of Sec 45(5A))

The controversy on timing of the liability to Capital Gains in case of JDA entered by Individuals/ HUF has come to a rest. It is now proposed that In case of JDA, the liability to pay capital gain tax on the land owner in respect of the land share that he gives away in exchange for built up area, will arise in the year in which the certificate of completion of the project is received.

Further, the guidance value, the value adopted for stamp duty purpose, of the share of such land or building, shall be the considered as increased by any consideration received in cash.

The provisions of the above subsection shall not apply where the assessee transfers his share in the project on or before the date of

issue of said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place.

#### **MODIFICATION OF SEC 49: COST OF THE BUILT-UP AREA RECOVERED BY LAND OWNER**

Where the landowner has paid tax under the above provisions, the cost of the built-up area acquired by him is the cost of sale consideration considered above for transferring his share in the land or building.

The above changes are applicable from AY 2018-19 only and NOT APPLICABLE for earlier assessment years. For earlier assessment years one has to continue to adopt the law as decided by various Tribunals/ Courts in this matter.

#### **FAIR VALUE DEEMED CONSIDERATION FOR TRANSFER OF UNLISTED SHARES (New Sec 50 CA)**

In order to compute Income under the head capital gains, it is proposed to insert a new section 50CA to provide that where consideration for transfer of share of a company is less than the Fair market value of such share, the FMV shall be deemed to be the full value of consideration for the purpose of computing income under the head capital gains. The methodology to compute FMV is yet to be prescribed.

#### **BROAD BASING INVESTMENT OPTIONS U/S 54EC**

In order to widen the scope of the section for sectors which may raise funds by issue bonds eligible for exemption under section 54EC, it is proposed to amend section 54EC as to provide that investment in any bond redeemable after three years which has been notified by the central government in this behalf shall also be eligible for exemption. This means, the Government may bring in bonds, other than REC and NHAI bonds, under the ambit of this section.

#### **EXEMPTION OF CAPITAL GAINS FOR LAND POOLING FOR AMARAVATHI (NEW SEC. 10(37A))**

Exemption for the Capital Gains in respect of transfer of a specified capital asset by an individual or a Hindu undivided family, who was the owner of such asset as on the 2nd day of June, 2014 and transfers that asset under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014, shall be exempted.

Transfers such as:

- (i) Transfer of capital asset being land or building or both, under land pooling scheme.
- (ii) Sale of LPOCs by the said persons received in lieu of land transferred under the scheme.
- (iii) Sale of reconstituted plot or land by said persons within two years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.



### **MODIFICATION OF EXEMPTION PROVIDED FOR SALE OF LONG TERM LISTED SECURITIES (MODIFICATION OF SEC. 10(38))**

Exemption of income arising from transfer of Long Term Capital Asset acquired on or after 1<sup>st</sup> day of October 2004, will be allowed for equity shares or equity oriented fund only, if the acquisition has suffered STT. Further, the Government is entitled to notify certain acquisitions which may not be liable for STT also to be entitled for this benefit, such as assets acquired through IPO, FPO, Bonus or Rights Issue. One need to wait for the notification to verify if shares acquired through Gift/ inheritance would also be entitled for this exemption.

### **TAX DEDUCTION (TDS)/ TAX COLLECTION (TCS)**

#### **TDS ON RENT BY INDIVIDUALS / HUF (New Sec 194 IB)**

Individuals or a HUF (other than those covered under 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of month during the previous year, shall deduct an amount equal to five percent of such income as income-tax thereon.

In order to reduce the compliance burden, the deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act. Also, the deductor shall be liable to deduct tax only once in a previous year, in case of crediting the rent at end of the financial year or at time of last rental OR at time of rent payment.

#### **TDS ON JDA (NEW SECTION 194 IC)**

In case any monetary consideration is payable by a resident under the Joint Development Agreement, tax at the rate of ten per cent shall be deductible from such payment.

#### **LOWER TDS ON CALL CENTRE OPERATORS (Modification of Section 194J)**

Section 194J has been amended to reduce the rate of deduction of tax at source to *two per cent.* from *ten per cent.* in case of payments received or credited to a payee, being a person engaged only in the business of operation of call centre.

#### **TDS EXEMPTION FOR INSURANCE COMMISSION (Modification of Section 197A)**

In order to reduce compliance burden in the case of Individuals and HUFs, section 197A has been amended so as to make them eligible for filing self-declaration in Form.No.15G/15H for non-deduction of tax at source in respect insurance commission referred to in section 194D.

#### **TDS PROVISIONS EXTENDED TO OTHER SOURCES**

Extends expense disallowance u/s 40(a)(ia) due to TDS failure to 'income from other sources' computation It is proposed to amend Sec 58 (which provides for amounts which are not deductible in computing the income under the head "Income from other sources") so as to provide that provisions of section 40(a)(ia) shall, so far as they may be, apply in computing income chargeable under the head "income from other sources" as they apply in computing income

chargeable under the head "Profit and gains of business or Profession". This amendment will take effect from 1st April, 2018

### **TAX COLLECTION AT SOURCE (TCS) EXEMPTION UNDER SECTION 206C**

In order to reduce compliance burden in certain cases, section 206C has been amended, to exempt the following class of buyers such as the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; local authority as defined in explanation to Section 10(20); a public sector company which is engaged in the business of carrying passengers, from the applicability of the provision of subsection (1F) of section 206C of the Act.

### **TAX COLLECTION AT SOURCE (TCS) UNDER SECTION 206CC**

In order to strengthen the PAN mechanism, it is proposed to insert new section 206CC

Any person paying any sum or amount on which tax is collectable at source under chapter XVII BB (Collectee) shall furnish his permanent Account Number to the person responsible for collecting such tax. Failing which tax shall be collected at the twice the rate mentioned in the relevant section or at the rate of five percent whichever is higher.

### **CHARITABLE TRUST/INSTITUTIONS / POLITICAL PARTIES:**

#### **REPORTING ON MODIFICATION OF OBJECTS OF TRUST (MODIFICATION OF SEC. 12A)**

Exemption under section 11 and 12 for the income by the trust may not be allowable in case of modifications to the objects of the trust, which do not conform to the conditions of registrations. However, if an application is filed in the prescribed form and manner, within a period of 30 days from the date of adoption/ modification to the principal commissioner or commissioner, the exemption may continue subject to conditions.

#### **DONATIONS TO CORPUS NOT TO BE CONSIDERED AS APPLICATION OF INCOME FOR OBJECTS OF TRUST/ INSTITUTIONS (MODIFICATION OF SEC. 10(23C) & SEC 11)**

For Trusts / Institution entitled for exemption u/s. 11 & 12 or specified sub section of Sec. 10(23C), the donations made towards corpus of other Trusts/ Institutions would not be considered as application of income for the objects of the Trust i.e., for charitable or religious purposes (Applicable for AY 2018-19)

#### **CHARITABLE TRUST TO ENJOY EXEMPTION ONLY IF RETURN IS FILED**

A Charitable Trust claiming exemption u/s. 11 & 12 must file their return of Income within the due date prescribed u/s. 139(4) i.e., before the end of the Assessment Year i.e., for AY 18-19, the tax returns should be filed on or before 31<sup>st</sup> March 2019.

### **RESTRICTION UNDER SECTION 80 G DEDUCTION TO CASH DONATIONS (MODIFICATION OF SEC. 80G)**

No deduction shall be allowed under this section in respect of donation of any sum exceeding Rs. 2,000/- unless such sum is paid by any mode other than cash.

### **OVERHAUL OF POLITICAL DONATIONS (MODIFICATION OF SEC. 13A)**

Political parties are restricted to accept cash donations up to Rs. 2,000/- only. Any donation above Rs. 2,000/- to be in the form of account payee cheque/account payee demand draft/NEFT or through electoral bonds. Electoral Bonds are new instruments that can be purchased through RBI by payment through banking channels only. The Political parties may not disclose the name and address of the donors, who contribute by way of electoral bonds. This is Applicable for Asst. Year 2018-19. Political parties should file their Return of Income within due date u/s. 139(4B) to be entitled for exemption.

### **OTHER CHANGES IN INCOME TAX PROVISIONS**

#### **SECTION 80CCD: DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT.**

In order to provide parity between an individual who is an employee and an individual who is self-employed, section 80CCD has been amended so as to increase the upper limit of ten per cent of gross total income to twenty per cent in case of individual other than employee.

#### **SECTION 80CCG: DEDUCTION IN RESPECT OF INVESTMENT MADE UNDER AN EQUITY SAVINGS SCHEME.**

Section 80CCG has been amended to *phase out* the deduction of Rs 25,000 for three consecutive assessment years by providing that *no deduction shall be allowed* from assessment year 2018-19. However, an assessee who has claimed deduction under this section for assessment year 2017-18 and earlier assessment years shall be allowed deduction under this section till the assessment year 2019-20 if he is otherwise eligible to claim the deduction as per the provisions of this section.

#### **FILING TAX RETURN MADE SIMPLE FOR ASSESSEE HAVING INCOME BELOW RS.5 LAKHS**

Simple one page form to be filed as Income Tax return for the category of individuals having taxable income of Rs.5,00,000 other than business income.

#### **ADVANCE TAX LIABILITY FOR PROFESSIONALS**

Under scheme of presumptive taxation for professionals with receipt up to Rs50 Lakhs per annum, advance tax can be paid in one instalment before 15<sup>th</sup> March of the financial year, instead of four instalments.

#### **RESTRICTION OF CASH EXPENDITURE U/S. 35AD (MODIFICATION OF SEC. 35AD)**

This provides for deductions of amount spent as capital expenditure in specified business, such as cold storage, ware housing facility, specified hotels, and other business. It is proposed to deny this

deduction if such expenditure more than Rs. 10,000/- is incurred other than by way of account payee cheque or account payee bank draft or use of electronic clearing system.

#### **INCREASE IN DEDUCTION FOR PROVISION FOR NON-PERFORMING ASSETS (MODIFICATION OF SEC. 36)**

Deduction in respect of provisions made for bad and doubtful debts made by a scheduled bank [not being a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank is enhanced to 8.5% from earlier 7.5% (applicable from Asst. Year 2018-19)

#### **EXEMPTION FOR WITHDRAWAL FROM PENSION FUND (New Sec 10(12B))**

In order to provide further relief to an employee subscriber of NPS, section 10 has been amended so as to provide exemption to partial withdrawal to the extent of 25% of the contribution made by an employee in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under.

#### **DEEMED INCOME ON VACANT PROPERTIES HELD AS STOCK IN TRADE (Modification of Sec 23)**

Builders holding building or land as part of these buildings, as stock in trade, the notional rentals mechanism shall apply only after one year from the end of the year in which completion certificate is obtained. This is applicable from AY 2018-19. Indirectly this may also

give a view that for the previous years deemed rental value be liable for tax on vacant and completed unsold properties.

#### **AUDIT EXEMPTION FOR PRESUMPTIVE TAX BUSINESS (MODIFICATION OF Sec 44AB & 44AA)**

Threshold limit for audit of business entities who opt for presumptive income scheme has been increased from Rs. 1crore to 2crores. Similarly, the threshold for maintenance of books for Individuals and HUF is increased from turnover of Rs.10 Lakhs to Rs.25 Lakhs or income from Rs.1.2 Lakhs to Rs.2.5 Lakhs.

#### **RESTRICTION OF CASH EXPENDITURE IN EXCESS OF RS. 10,000/- (MODIFICATION OF SEC. 40A (3))**

Disallowances applicable for payments made other than by way of account payee cheque or account payee bank draft or use of electronic clearing system exceeding Rs. 10,000/- for a person in a day including payment for plying and hiring or leasing goods carriages.

#### **RESTRICTION OF CASH PAYMENT ABOVE RS 10,000/- FOR ACQUIRING CAPITAL ASSETS (MODIFICATION OF SEC. 43)**

For arriving at the cost of the asset: Any expenditure for acquisition of any asset or part thereof exceeding Rs. 10,000/- other than by way of account payee cheque or account payee bank draft or use of electronic clearing system exceeding, such expenditure shall be ignored for the purposes of determination of actual cost.

### **BROAD BASING OF TAX ON GIFT FROM NON-RELATIVES (OVERHAUL OF SEC. 56)**

Earlier, where certain specified persons got/acquired specified assets without consideration or for lower consideration, the fair value or excess of fair value over the consideration paid was liable to be taxed in the hands of the recipient. It is now, proposed to broad base the same, to all types of assessee and all types of assets.

### **ADDITIONAL BENEFIT FOR DIGITAL PAYMENT FOR PERSUMPTIVE BUSINESS (Modification of Section 44AD)**

In order to promote digital transactions and to encourage small unorganized business to accept digital payments, section 44AD has been amended to reduce the existing rate of eight percent to six percent in respect of total turnover or gross receipts not exceeding Rs.2crores, provided, the receipts are received by the assessee in the form of:

- an account payee cheque or
- account payee bank draft or
- use of electronic clearing system through a bank account

However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in any other mode.

### **RESTRICTING SET OFF OF LOSS FORM HOUSE PROPERTY (MODIFICATION OF SEC 71)**

Set off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year.

However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act. The loss can be carried forward for indefinite period.

### **CARRY FORWARD LOSS BENEFITS TO START UPS (MODIFICATION OF SEC. 79)**

This is proposed to provide higher benefits to Start Ups. In case of a start Up, loss shall be carry forward and set off against the Income of current financial year, if all the shareholder who held shares carrying voting power on the last day of year in which loss was incurred continued to hold those shares on the last date of financial year, even if their holding goes below 51% (In respect of other companies if there is change in beneficial shareholding changes more than 51% the loss carried forward gets lapsed). Provided such losses can be set off and carry forward for the losses incurred during the period of seven years from the date of incorporation.



## OTHERS

### LIBERALISING TAX HOLIDAY FOR START UPS (MODIFICATION OF SEC. 80IAC)

The tax holiday for eligible Start-ups have been extended to 3 consecutive assessment out of 7 years as against 3 out of 5 years from the date of incorporation.

### EXPANDING TAX HOLIDAY FOR AFFORDABLE HOUSING PROJECTS (MODIFICATION OF SEC. 80IBA)

The project is to be completed within a period of **5 Years (earlier 3 years)** from the date of approval by the competent authority. **“Built up area”** is substituted by **“carpet area”** under this provision. **“Carpet area”** shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016. Further, it is proposed to restrict the carpet area of the houses to 30 sq. mtr. only to the Metro areas i.e., Chennai, Delhi, Kolkata & Mumbai. In all other areas, including outside the Municipal Limits of Metro the restriction will be till 60 sq. mtr. of carpet area

### TAXATION ON INCOME FROM CARBON CREDITS (NEW SEC. 115BBG)

Income from Carbon Credits will be taxable at 10% on the gross amounts without allowing any expenses. Applicable from AY 2018-19. This also rests the controversy, whether income from carbon credits are taxable or not from the view of the tax authorities.

### BROAD BASING TAX ON DIVIDENDS IN HANDS OF RECIPIENTS (MODIFICATION OF SEC. 115BBDA)

From AY 2017-18, Individuals, HUF and Firms earning dividend in excess of Rs.10 lakh was subjected to an additional tax of 10%, though the company would have paid DDT on the dividends paid. From AY 2018-19, they have broad based this to all resident assessee other than domestic companies OR funds, trusts, institutions eligible for Sec. 10(23C) exemption or registered U/s. 12AA. This would mean dividends received by Private Trust would also be liable for this tax.

### PENALTY FOR RECEIPT OF CASH ABOVE RS 3 LACS (NEW SEC. 269ST AND SEC. 271DA)

Penalty of 100% is applicable u/s. 271DA, if any Person receives an amount of Rs. 3 Lakhs or more in aggregate from a person in a day or in respect of a single transaction or relating to one event or occasion by any way other than account payee cheque or account payee bank draft or use of electronic clearing system.

### PENALTY ON PROFESSIONALS (NEW SEC 271J)

In course of proceedings before Assessing officer or commissioner appeals, furnishing of incorrect information in reports as submitted by accountant or merchant banker or registered valuer will be liable for penalty of Rs 10,000/- for each such certificate.

## CORPORATE TAX

### RATES-CORPORATE (MODIFIED)

In case of Domestic Companies, whose Gross Receipts doesn't exceed 50 crores in financial year 2015-16, tax shall be levied at 25% on total income. In all other cases, it shall continue to be taxable @ 30% on taxable income effective from assessment year 2018-19.

### SEZ UNIT DEDUCTION RESTRICTED TO GROSS TOTAL INCOME (MODIFIED SEC 10AA)

It is proposed to clarify that the deduction u/s 10AA is allowable from the total income of the assessee and not from the income of any specific Undertaking. The deduction would be limited to the Gross Total Income of the assessee. This reverses the recent decision of the Supreme Court in Yokogawa case. However, this is applicable from assessment year (AY) 2018-19 and not for the prior years.

### RESTRICTION OF FOREIGN TAX CREDIT (FTC) IN CASE OF MINIMUM ALTERNATE TAX (MAT)/ ALTERNATE MINIMUM TAX (AMT) LIABILITY (MODIFICATION OF SEC 115JAA/JD)

In case where foreign tax credit claimed under sections 90, 90A and 91 as allowed against the tax payable under the provisions of MAT (115JB)/AMT (115JC) exceeds the amount of such tax credit admissible against the tax payable by the assessee on its income in accordance with the regular provisions of this Act, while computing MAT/AMT such excess foreign tax credit claimed is to be ignored. Thus, restricting FTC credit to the regular tax liability only. Applicable from AY 2018-19.

## EXTENSION OF TIME LIMIT FOR CARRY FORWARD OF MAT/AMT CREDIT

The MAT/AMT credit was allowed to be carried forward for 10 assessment years which is now extended to **15 assessment years**. These amendments will take effect from 1st April, 2018 and will accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

### MAT ADJUSTMENTS FOR COMPANIES ADOPTING Ind AS (MODIFICATION OF SEC 115JB)

- Book Profit U/s 115JB shall be increased by amounts credited to Other Comprehensive Income (OCI) and reduced by the amounts debited to OCI. However, such adjustments shall not be done for amounts adjusted in OCI due to revaluation of assets under applicable standards.
- An adjustment shall be made in Book profit for the Gains/Losses resulted during the course of distribution of non-cash assets to shareholders in terms with applicable standards.
- No adjustments on Book Profits for revaluation made, if any, needs to be made in books of resulting company upon demerger.
- Adjustments for transition amount- An 1/5<sup>th</sup> of transition amount shall be adjusted to the book profit for five years starting from date of convergence.
- However, transition amount does not include transition difference of foreign operation, deemed cost adjustments for investments under Ind AS- 101, adjustments for equity instruments designated at fair value through OCI, OCI which can be reclassified to P&L on convergence date and revaluation surplus as per Ind AS-16 and Ind AS-38.

## ASSESSMENT PROCEDURES

### SEARCH AND SEIZURE PROCESS (MODIFICATION OF SEC 132)

It has been amended retrospectively stating that the reasons to believe/suspect shall not be provided to any persons or any authority or appellate tribunal. The decision in cases of Ramaiah Reddy and ESSDEE Aluminium is over ruled.

### TIME FOR FILING REVISED TAX RETURNS (MODIFICATION OF SEC 139(5))

The time limit for furnishing revised return shall be available up to the end of relevant assessment year or before the completion of assessment whichever is earlier i.e., the revised returns for AY 2017-18 should be filed on or before 31<sup>st</sup> March 2018. Earlier it could have been filed on or before 31<sup>st</sup> March 2019.

### FEE FOR LATE FILING OF RETURN OF INCOME AND PAYMENT OF SAME AT TIME OF FILING TAX RETURNS (NEW SEC 234F AND MOFDIFICATION OF SEC 140A)

A new section 234F in the Act to provide that a fee for delay in furnishing of return shall be levied for assessment year 2018-19 and onwards in a case where the return is not filed within the due dates specified for filing of return under sub-section (1) of section 139.

Proposed fee structure is as follows-

Particulars	Amount(Rs)
In case, if the return is furnished after the due date but on or before the 31st day of December of the assessment year;	5,000/-
In any other case	10,000/-
However, in a case where the total income does not exceed five lakh rupees, the fee shall not exceed.	1,000/-

#### As a consequence:

In section 140A, in case of delay in furnishing of return of income, along with the tax and interest payable, fee for delay in furnishing of return of income shall also be payable.

In section 143(1), in computation of amount payable or refund due, as the case may be, on account of processing of return under the said section, the fee payable under section 234F shall also be taken into account.

The provisions of section 271F in respect of penalty for failure to furnish return of income shall not apply in respect of assessment year 2018-19 and onwards.

### **TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND REASSESSMENTS (MODIFICATION OF SEC 153)**

Period of completion of assessment U/s 143/144 has been reduced from 21 to 18 months which is effective from AY 2018-19 onwards and further reduced to 12 months from AY 2019-20 onwards

Time limit for making an order for reassessment U/s 147 shall be 12 months instead of 9 months from end of financial year in which notice U/s 148 is served applicable from AY 2019-20 onwards.

### **RESTRICTION OF REFUNDS IN CERTAIN CASES (NEW SEC 241A)**

In case of refund of any amount becomes due to assessee U/s 143(1) and notice has been issued for scrutiny u/s 143(2), and the assessing officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of Principal Commissioner/Commissioner withhold the refund up to the date on which the assessment is made. This Section applies to the returns furnished for the AY 2017-18 and subsequent years.

### **INTERNATIONAL TAXATION**

#### **EXEMPT FROM INDIRECT TRANSFER OF ASSET FOR NON RESIDENT INVESTOR, IN FOREIGN INSTITUTIONAL INVESTMENT (FII). (MODIFICATION OF SEC 9)**

It is proposed that the provisions of indirect transfer of asset (where the asset derives directly/ indirectly, its value substantially from assets situated in India) shall not apply to a Non Resident in respect of his investments in a FII which is registered as Category-I or Category-II Foreign Portfolio Investor under SEBI. Earlier, this was applicable to all entities registered/ incorporated outside India. (Applicable from AY 12-13)

#### **EXEMPTIONS FOR ELIGIBLE INVESTMENT FUNDS SET UP OUTSIDE INDIA AND MANAGED FROM INDIA. (MODIFICATION OF SEC 9A)**

In the case of eligible investment funds, there were certain conditions prescribed for such funds not to be taxed in India. One of the conditions was pertaining to the average corpus held by such funds. It is proposed that, the above mentioned criteria would not be applicable for such fund which is wound up during the year. (Applicable from AY 16-17)

#### **SALE OF LEFTOVER STOCK OF CRUDE OIL NOT TAXED IN INDIA. (MODIFICATION OF SECTION 10(48B))**

It is proposed that income of foreign company from the sale of leftover stock of crude oil, if any from its Indian facility after expiring of the agreement would not be taxed in India, subject to conditions. (Applicable from 1<sup>st</sup> April 2018)

### **LIMITATION OF DEDUCTIBLE INTEREST IN CASE OF ASSOCIATED ENTERPRISES TRANSACTIONS. (NEW SECTION 94B) (THIN CAPITALISATION RULES)**

In line with the BEPS Action Plan 4, it is proposed that in the case of interest expense incurred by an Indian entity/ Indian PE on the loans/ borrowing given/ loans funded by guarantee given, by its associated enterprise, then the lesser of the amount (actual interest expense or 30% of Profits before interest, depreciation, taxes, amortisation) will be allowed as a deductible interest expense from the income of the Indian entity/ Indian PE. These provisions applicable only if the interest expenditure exceeds 1Cr.

However, the above would not be applicable to banking or insurance companies.

The interest so disallowed as above, can be carried forward for deduction to the subsequent assessment years subject to a maximum of 8 years.

#### **Illustration:**

Interest expense - 4 crore

Profits (before interest, depreciation, tax) = 8 cr

Interest eligible for deduction = Min of 30% x 8cr OR 4 cr

= 2.4cr or 4 cr.

Rs 2.4 cr would be eligible for deduction in the current year and the balance Rs 1.6cr (4cr-2.4cr) can be carried forward for deduction in subsequent 8 assessment years.

### **DEFINITION OF TERMS OF DOUBLE TAXATION AVOIDANCE AGREEMENTS (MODIFICATION OF SECTION 90 AND 90A)**

In order to bring in clarity, it is proposed that in the case of DTAA's/ Agreement entered into by India with other countries, if any 'term' appearing in the said DTAA/ Agreement is defined in the DTAA/ Agreement, the same should be considered. If such term is not defined in the DTAA/ Agreement, but defined in the Income Tax Act, then the meaning as per the Income Tax Act or any explanation issued by the Central Gov. would be assigned. (Applicable from AY 18-19)

### **MEANING OF 'PERSON RESPONSIBLE FOR PAYING' IN RESPECT OF PAYMENT MADE TO NON-RESIDENT/ FOREIGN COMPANY. (MODIFICATION OF SECTION 204)**

In the case of any payment to a non-resident/ foreign company, the payer himself/ payer company including the principal officer would be the responsible person for furnishing of information.

### **REPEALED - RESEARCH AND DEVELOPMENT CESS ACT, 1986 (R&D CESS ACT)**

The R&D Cess Act is proposed to be repealed from 1<sup>st</sup> April 2017. This law had imposed a payment of R & D Cess at 5% of the payments made to Non Residents towards Technical fee, design, drawing etc.



## TRANSFER PRICING

### **SPECIFIED DOMESTIC TRANSACTIONS (SDT) RESTRICTED ONLY TO PAYMENTS TO ASSOCIATED ENTERPRISES HAVING IMPACT ON PROFIT LINKED INCENTIVES (MODIFICATION OF SECTION 92BA)**

It is proposed that the provisions of Specified Domestic Transactions ('SDT') would not be applicable to expenditure in respect of which payments has been made to persons specified in Section 40A(2)(b) (related party). These would however, continue to apply for payments to related parties in case of profit linked incentives. (Applicable from AY 2018-19)

### **TRANSFER PRICING- PRIMARY AND SECONDARY ADJUSTMENTS (NEW SECTION 92CE)**

Where as a result of a primary adjustment made under transfer pricing regulations under prescribed conditions and there is an increase in the income/ reduction in loss of the Indian taxpayer, it is proposed that a secondary adjustment would be made if:

- a. The excess money available with the AE of the Indian taxpayer is not repatriated to India within prescribed time limit, then such amount would be deemed to be advances made by the Indian taxpayer to its AE and interest income shall be computed for the Indian tax payer. Interest would be computed in a manner yet to be prescribed.

b. Excess money would mean the difference between the arm's length price determined under primary adjustment and the price at which the international transaction has actually been undertaken.

The above mentioned secondary adjustment would not be carried if the primary adjustment amount is less than Rs 1 Cr or primary adjustment pertains to period prior to AY 2017-18. (Applicable from AY 2018-19)

## INDIRECT TAXES



## CUSTOMS

### AMENDMENTS TO CUSTOMS ACT, 1962

- Authority for Advance Ruling for Customs purposes shall be merged with the Income TAX Authority for Ruling.
- Application fee for advance ruling raised to Rs 10000/- from Rs 2500/-.
- The time limit for the Authority to pronounce the Rulings extended to six months from ninety days under section 28-I.
- In the manner of self-assessment of duty, the importer is required to produce any document that would establish the ascertainment of duty instead of contract, policy of insurance, catalogue etc. as required prior to amendment of section 17(2).
- Refund of the excess payment of duty before an order permitting clearance of goods for home consumption is permitted provided under section 27(f) subject to its evidence from the bill of entry/reassessed bill of entry.
- Bill of entry for clearance of imported goods under section 46(3), shall be presented before the end of the next day following the day on which such goods have arrived at the port. Failure to do so, without sufficient cause attracts charges for late presentation.
- In the case of payment of duty upon importation under section 47(2), the time and manner of payment of duty as well as interest on such duty if failed to be paid, have been redefined. The interest rate shall be not less than ten per cent but not more than thirty-six per cent per annum.
- Imported goods pending removal from port may be permitted to be stored in a public warehouse for a period not exceeding thirty days, by the Assistant Commissioner and further period not exceeding thirty days by the Principal Commissioner.
- The shipping bill or bill of export or the form used for the clearance of warehoused goods for exportation under section 69 shall contain all the information which the shipping bill for the goods imported or to be exported by post should contain.
- Label or declaration accompanying the goods is no longer to be treated as an entry as section 82 is omitted.
- Application for settlement of cases under section 127B (1), can also be made by any person other than importer, exporter or any person, in respect of a show cause issued to him relating to the applicant.
- Under section 127C(3), the power of the Commissioner of Customs to handle the application for settlement of cases has been extended to the Commissioner of Customs/Principal Additional Director General of Revenue Intelligence/Additional Director General of Revenue Intelligence having jurisdiction over the same.
- The Order of Settlement Commission passed under section 127(5) shall be amended at any time within three months of the date of the order, to rectify any error apparent on record, either Suo-moto or at the instance of the jurisdiction of jurisdiction officers or the applicant. However, on amendment that enhances the liability can be made without being heard.

## DUTY RATIONALISATION

- Basic customs duty is being reduced from 10%/7.5% to 5% on all items of machinery including instruments, apparatus and appliances, transmission equipment and auxiliary equipment required for initial setting up of fuel cell based system for generation of power of for demonstration purposes; required for operating on biogas or bio-methane etc. *subject to conditions under Notification 5/2017-Customs.*
- 5% concessional BCD on imports of inputs for use in the manufacture of LED driver or MCPCB, LED lights or fixtures etc. *subject to conditions in Notification 6/2017.*
- Exemption limit for duty free imports of buckles, eyes, Rivets, studs etc. imported by a leather footwear manufacturer increased from 3% of FOB value of goods exported during the preceding financial year to 5% *subject to Notification 6/2017.*



## CENTRAL EXCISE

### AMENDMENTS TO THE CENTRAL EXCISE ACT, 1944

- Changes have been made to Authority for Advance Ruling application fee for advance ruling, the time limit for the Authority to pronounce the Rulings, like in the Customs Act, 1962.
- Changes in regard to making application for settlement of cases by any other person, the power of the Commissioner of Customs

to handle the application for settlement of cases, amendment to the order of the have been made similar to the Customs Act, 1962.

## EXCISE DUTY CHANGES

- Tariff rate of 12.5% is proposed with effect from 1.1.2017 as against the present rate of 27% on motor vehicles for transport of more than 13 persons.
- Transfer of CENVAT credit in the case of shifting, sale, merger etc. is now available with approval. Approval to be given within three months from the date of receipt of application by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise. Principal Commissioner may extend the period by further period not exceeding six months, *subject to Notification 4/2017(Central Excise - N.T)*

## CLARIFICATIONS

- EOUs will be eligible to import or procure raw materials/inputs at other concessional rate of BCD/CVD or SAD as the case may be. Subject to fulfilment of all the conditions eligible to such concessional or NIL duty.
- No exemption shall apply to excisable goods which are produced or manufactured by an EOU and cleared to the DTA. Non-applicability of exemptions is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA and not in respect of inputs or raw materials procured by them domestically and utilised for production /manufacture of goods which are cleared by them to DTA.



### SERVICE TAX

- Services by way of 'process amounting to manufacture' is omitted from negative list and is being incorporated in the general exemption notification.
- One time upfront amount, premium or by any other name, payable for long-term lease of industrial plots (30 Years or more) by State Government Industrial Development corporation, is exempt from service tax.
- Rule 2 A of Service Tax (Determination of Value) Rules, 2006 is being amended with effect from 01.07.2010. The value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be, shall not include value of property in such land or undivided share of land.
- Changes have been done in Service tax, regarding Authority for Advance Ruling, similar to the Customs Act, 1962 and Central Excise Act, 1944.
- Allows transfer of CENVAT Credit within 3 months in case of shifting, transfer, merger etc. under Rule 10 of CCR similar to Central Excise changes.

### GOODS AND SERVICES TAX (GST)

- Post the recommendation of various aspects of GST implementation, the preparatory work for this reform is in the advanced stage at the Government level. Several teams of officers both from the States and Central Board of Excise and Customs have been trained. The finishing touches to the Model GST law and rules and other details are in progress.
- The broad contours of the GST rate structure, threshold exemption and parameters for composition scheme etc. examination of draft model GST law, draft IGST law are under finalisation. The extensive reach-out efforts to trade and industry for GST will start from 1st April, 2017 to make them aware of the new taxation system.



## COMPANY LAW

### AMENDMENT IN THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014.

The Companies to whom the CSR regulations are applicable, can, after obtaining the approval from the CSR committee, get its CSR activities done through the following organizations:

- Section 8 companies,
- Registered Trusts,
- Registered Society,

In case, the above mentioned entities are promoted by:

- the companies themselves or
- through other companies to whom CSR is applicable, if the Company is pooling its resources for CSR activities,
- Through the central or state government, such entities need not have any track record.

However, if these above mentioned entities are third party entities, then a track record of previous 3 years is necessary.

The Companies are also required to provide the manner of spending through reporting and monitoring mechanism.

### NATIONAL COMPANY LAW TRIBUNAL (NCLT) AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT) WHICH COME INTO FORCE W.E.F. 1<sup>ST</sup>JUNE, 2016.

The National Company Law Tribunal ('NCLT') and its appellate body, the National Company Law Appellate Tribunal ('NCLAT') have finally been constituted with effect from June 1, 2016.

The NCLT has been endowed with all such powers as were being exercised by the erstwhile Company Law Board ('CLB'), the High Court and the Board for Industrial and Financial Reconstruction ('BIFR'). In effect, the CLB stands dissolved.

Professionals are hopeful for a single window resolution for mergers, amalgamation and other major corporate restructuring events such as compromise, winding up in the times to come.

### AMENDMENTS IN THE COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014.

A private limited Company may accept loans from its members up to 100% of the paid up share capital+ free reserves + securities premium account.

These amounts availed are to be reported to the Registrar of Companies through the Financial Statements.

Now any amount raised by issue of bonds / debentures compulsorily convertible into shares within 10 years are excluded



from the definition of 'Deposits'. Earlier only five years limit was specified for considering it as Deposits.

Now any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the Company and listed on a recognized stock exchange as per applicable regulations made by Securities and Exchange Board of India' will also be out of purview of term Deposit.

Now any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the Company and listed on a recognized stock exchange as per applicable regulations made by Securities and Exchange Board of India' will also be out of purview of term Deposit.

With this notification, following other instances are also out of purview of deposits:

- Any consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.
- As an advance received and as allowed under the directions of the sectoral regulator, Central or State Government.
- Any amount received by the Company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India.
- An amount of Rs. 25,00,000/-or more received by a start-up Company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five

years from the date of issue) in a single tranche, from a person.

#### **AMENDMENTS IN THE COMPANIES (APPOINTMENT & REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014.**

No need to file e-form MR.1 for appointment of Key Managerial Personnel such as Chief Executive Officer (CEO) and Company Secretary and Chief Financial Officer (CS & CFO). It is only required to file for appointment of MD, Whole Time Director/Manager.

Board Report is not required to disclose the details pertaining to variations in the market capitalization of the Company remuneration of the Key Managerial Personnel against the performance of the Company and comparison of each remuneration of the key managerial personnel against the performance of the company

These were earlier required to be incorporated under the Board Report, the Managerial Remuneration Rules, 2014.

However, the aforesaid requirement has been done away with.

## **AMENDMENTS IN THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

The new code will replace existing bankruptcy laws and cover individuals, companies, limited liability partnerships and partnership firms. It amends laws including the Companies Act to become the overarching legislation to deal with corporate insolvency. It will also help creditors recover loans faster.

The creation of a new class of insolvency professionals that will specialize in helping sick companies. It also provides for creation of information utilities that will collate all information about debtors to prevent serial defaulters from misusing the system. The bill proposes to set up the Insolvency and Bankruptcy Board of India to act as a regulator of these utilities and professionals.

It also proposes to use the existing infrastructure of National Company Law tribunals and debt recovery tribunals to address corporate insolvency and individual insolvency, respectively.

## **AMENDMENTS IN THE COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014.**

- All companies are required to maintain the register of members in the form of MGT 1
- Extraordinary General Meeting can be convened on any day except National Holiday. The wording on working day is replaced by wordings as 'on any day except National Holiday'
- Every listed Company is required to intimate the Registrar of Companies, in the event of change in the shareholding position by 2% of paid up share capital and free reserves, of

the promoters and top ten shareholders of the Company, in Form No. MGT.10, within Fifteen days of such change.

- Any Resolution shall be deemed to be passed if majority shareholders approve such resolution by electronic means. Please note that the Companies Act lays down the elaborate procedure for conducting the voting through electronic means. It is different than getting the consent over the emails.
- Minutes books of general meetings are compulsorily required to be kept at the registered office and shall be preserved in the custody of Company secretary or any director duly authorized by the Board.

## **AN INTEGRATED PROCESS OF INCORPORATION OF COMPANIES HAS BEEN INTRODUCED BY THE MINISTRY USING SINGLE FORM INC-29 UNDER THE COMPANIES ACT, 2013 'SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE).**

- The ministry of corporate affairs (MCA) has recently introduced an E-form under the SPICE (Simplified Proforma for Incorporating Company Electronically) scheme. Through this E-form, INC-32 along with MOA in a company can be incorporated E-form INC-33 and AOA in E-form INC-34. This Simplified e-form has been introduced to further simplify the incorporation of a company electronically.
- Form INC-32 deals with a single form for the reservation of name, incorporation of a new company or for allotment of DIN. It is accompanied by the documents that support it like details of Directors & subscribers, E-MoA and E-AoA etc. if the form is processed and is complete then the company will

be registered and CIN as well as DIN will be given to the Company and the proposed Directors.

**THE COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) RULES, 2016 HAS BEEN ISSUED AND COME INTO FORCE FROM 26TH DEC 2016.**

Under the new fast track exit scheme for defunct companies, now requires a special resolution or consent of 75% of voting power to authorize such closure of the Company.

**AMENDMENTS IN COMPANIES INCORPORATION RULES 2014 INCLUDING THE FORMS AND PROCEDURE FOR 'SIMPLIFIED PERFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE) NOW ONLY ONE SIMPLIFIED FORM INC 32 IS LAUNCHED**

Companies with this evolving system can get the Company incorporated together with the PAN and TAN by filing a single form.

**FEMA UPDATES**

**FOREIGN EXCHANGE MANAGEMENT (DEPOSITS) REGULATIONS, 2016**

The New Deposit Regulations attempts to align the definition of NRI. NRI has been defined to include a person resident outside India and who is a citizen of India and person of Indian origin (PIOs) have been separately defined to include 'Overseas Citizen of India' cardholders i.e.; Persons of Indian Origin (PIO) of certain categories who migrated from India and acquired citizenship of a foreign country, other than Pakistan and Bangladesh, are granted an OCI as long as their home countries allow dual citizenship in some form or the other under their local laws.

Minimal changes have been introduced to the key existing bank account schemes under which authorised dealer banks in India and companies were permitted to accept deposits from NRIs and non-residents Account Scheme, Non-Resident (External) Rupee Account Scheme, and the Non-Resident Ordinary Rupee Account Scheme). However, the Non-Resident (Non-Repatriable) Rupee Deposit Scheme and Non-Resident (Special) Rupee Account Scheme have now been discontinued.

Further, unlike the previous Deposit Regulations, the amended Deposit Regulations do not permit foreign portfolio investors (FPIs) and NRIs to open single non-interest bearing Indian Rupee accounts for routing certain investments into India (such as eligible portfolio investments by FPIs and on-market purchases of shares by NRIs).

A new bank account scheme for non-residents having a business interest in India has been permitted, namely the non-interest bearing Special Non-Resident Rupee Account (SNRR account).

SNRR accounts may be used for effecting *bona fide* transactions in Indian Rupees. The debits and credits to the SNRR account must be specific or incidental to the business proposed to be undertaken by the non-resident account holder in India.

### **OVERSEAS DIRECT INVESTMENT (ODI)**

#### **THE CHANGE IN REPORTING FORMS OF ODI AND ANNUAL PERFORMANCE REPORT HAS BECOME MORE SIMPLE AND TRANSPARENT.**

The Form ODI will have five sections instead of six by merging the Form ODI Part II with Form ODI Part I. There is no reduction in details to be provided.

#### **Submission of Annual Performance Report (APR):**

The due date for filing of APR has been extended from 30<sup>th</sup> June to 31<sup>st</sup> December every year. Further, the APR is required to be certified by the statutory auditor of the Indian party. Certification of APRs by the Statutory Auditor or Chartered Accountant shall not be insisted upon in the case of Resident Individuals and self-certification can be accepted in such cases.

#### **Submission of Annual Return on Foreign Liabilities and Assets (FLA):**

If the Indian Company does not have any outstanding investment in respect of FDI and/or ODI as on end of the reporting year, the Company need not submit the FLA Return. Similarly, if the Indian

Company has not 'received any fresh FDI and/or ODI in the latest year but the Company has outstanding FDI and/or ODI, then that Company is still required to submit the FLA Return every year by 15 July.

### **PERMITTING OPENING OF FOREIGN CURRENCY ACCOUNTS FOR START-UPS AND INSURANCE COMPANIES**

To support the Government of India's start-up initiative, it has been decided by the RESERVE BANK OF INDIA that an Indian start-up, having an overseas subsidiary, may open a foreign currency account with a bank outside India. In addition, payments received in foreign exchange by an Indian start-up arising out of sales/ export made by the start-up or its overseas subsidiaries will be a permissible credit to the Exchange Earners Foreign Currency (EEFC) account maintained in India by the start-up.

### **EXTERNAL COMMERCIAL BORROWINGS (ECB) BY START-UPS.**

Permitting start-up enterprises to access rupee loans under ECB framework with relaxations in respect of eligible lenders. Issuance of innovative Foreign Direct Investment instruments like convertible notes by start-up enterprises and Streamlining of overseas investment operations for the start-up enterprises.

Under the ECB framework for Start-ups, lender / investor (foreign entity) shall be a resident of a country who is either a member of Financial Action Task Force (FATF) or a member of a FATF-Style Regional Bodies; and shall not be from a country identified in the public statement of the FATF as:

- i. A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
- ii. A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

However, it has been provided that overseas branches or subsidiaries of Indian banks and overseas wholly owned subsidiary / joint venture of an Indian company will not be considered as recognized lenders under this framework.

Under the framework, ECB proceeds can be utilised for any expenditure in connection with the business of the borrower.

#### **TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) (ELEVENTH AMENDMENT) REGULATIONS, 2016**

A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 per cent foreign investment is allowed in the automatic route and there are no FDI linked conditionality, may issue equity shares or preference shares or convertible debentures or warrants to the said non-resident entity against pre-incorporation/pre-operative expenses incurred by the said non-resident entity up to a limit of five per cent of its capital or USD 500,000 whichever is less, subject to the conditions laid down below.

- Within thirty days from the date of issue of equity shares or preference shares or convertible debentures or warrants but

not later than one year from the date of incorporation or such time as Reserve Bank of India or Government of India permits, the Indian company shall report the transaction in the Form FC-GPR to the Reserve Bank.

- The valuation of the equity shares or preference shares or convertible debentures or warrants shall be subject to the provisions of Paragraph 5 of Schedule 1 of these Regulations.
- A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/pre-operative expenses against which equity shares or preference shares or convertible debentures or warrants have been issued has been utilized for the purpose for which it was received should be submitted with the FC-GPR form.

#### **TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2000**

The Amendment permits Indian start-ups to raise funds from Foreign Investors by issuing Notes, with the following key features:

A 'Note' has been defined as an instrument issued by a start-up evidencing receipt of money initially as debt, which is either:

- (a) Repayable at the option of the holder; or
- (b) Convertible into equity shares (within a period of 5 years from the date of issue) upon occurrence of specified events according to the terms of the Note.

Foreign Investors are required to invest at least INR 25, 00,000 or more in a single tranche to subscribe to the Notes, and issuance of equity shares against such Notes needs to comply with the Transfer



or Issue of Security by a Person Resident outside India) Regulations, 2000. In addition, NRIs are permitted to acquire Notes on non-repatriation basis in accordance with the Regulations.

- In addition to the usual permitted modes of remittance, escrow arrangements have also been permitted for making remittance of consideration for subscription Notes. Investors are also permitted to acquire or transfer the Notes by way of sale, so long as the sale takes place in accordance with the pricing guidelines prescribed by the RESERVE BANK OF INDIA.
- Where start-ups are engaged in sectors requiring government approval for foreign investment, government approval needs to be obtained before issue / transfer of the Notes to Foreign Investors.

#### **FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2000**

The Reserve Bank of India ("RBI") allowed Foreign Portfolio Investors ("FPIs") to invest in unlisted non-convertible debentures ("NCDs").

Earlier, FPIs were permitted to invest only in NCDs which are either listed or to be listed. Where they are to be listed, such listing must take place within 15 days of investment made in them. There was a carve-out to this rule which permitted FPI investment in unlisted NCDs in the infrastructure sector.

Under the new provision FPIs will be allowed to invest in unlisted NCDs irrespective of the sector in which the issuing company operates. The RBI circular announcing the new regime lays down certain end use restrictions, being investment in real estate business (as defined in FEMA 20), capital markets and purchase of land.



## ACCOUNTING AND AUDITING UPDATES

### APPLICABILITY OF IND AS IN PREPARATION OF FINANCIAL STATEMENTS - PHASE II

The Institute of Chartered Accountants of India (ICAI) has issued 39 Indian Accounting Standards (Ind AS) which have been notified under the Companies (Indian Accounting Standards) Rules, 2015 (“Ind AS Rules”), of the Companies Act, 2013.

#### PHASE II

Ind AS will be mandatorily applicable to the following companies for periods beginning on or after **1 April 2017**, with comparatives for the period ending **31 March 2017** or thereafter:

- Companies whose equity and/or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees 500 Crore.
- Unlisted companies other than those covered in Phase I and Phase II whose net worth are more than 250 crore INR but less than 500 crore INR.
- Holding, subsidiary, joint venture or associate companies of above companies.

## AUDITOR’S REPORT

### INTRODUCTION

In line with the international requirements, the Institute of Chartered Accountants of India (ICAI) revised its Standards on Auditing relating to auditor reporting on 17 May 2016.

The new requirements aim at enhancing the informational value of the auditor’s report.

Following table provides the suite of Standards on Auditing (SAs) that are new/revised:

SA 700 (Revised), Forming an Opinion and Reporting on Financial Statements	Revisions to establish new required reporting elements, and to illustrate these new elements through an example in the auditor’s report
SA 701, Communicating Key Audit Matters in the Independent Auditor’s Report	New standard to establish requirements and guidance for the auditor’s determination and communication of Key Audit Matters (KAMs). KAMs, which are selected from matters communicated to those charged with governance, are required to be communicated in the auditor’s reports for audits of financial statements of listed entities.

SA 705 (Revised), Modifications to the  Opinion in the Independent Auditor's Report	Clarification of how the new reporting elements are affected when expressing a modified opinion.
SA 706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report	Clarification of the relationship between the emphasis of matter and other matter paragraphs and the KAM section of the auditor's report.
SA 260 (Revised), Communication with Those Charged with Governance	Required auditor communication with those charged with governance will now include the significant risks identified by the auditor and circumstances that required significant modification of the auditor's planned approach to the audit.
SA 570 (Revised), Going Concern.	Amendments to the auditor reporting requirements relating to going concern, and new requirements to evaluate the adequacy of disclosure if events or conditions cast doubt on going concern.

The above Standards on Auditing are applicable for audits of financial statements for periods beginning on or after 1 April 2017.

#### **REVISED GUIDANCE NOTE ON AUDIT OF CONSOLIDATED FINANCIAL STATEMENTS**

- The Institute of Chartered Accountants of India (ICAI) has issued a Revised Guidance note on Audit of consolidated financial statements, this Guidance Note was originally issued in 2003 to provide guidance to the members undertaking audits of consolidated financial statements.
- Revised edition 2016 of the 'Guidance Note on Audit of Consolidated Financial Statements' incorporates the impact of the above referred developments in appropriate manner.
- The Guidance Note covers aspects such as introduction, definitions, responsibility of the parent, responsibility of the auditor of consolidated financial statements, audit considerations, auditing the consolidation, special considerations, management representations, reporting, etc. For the benefit of the members, the Appendices to the Guidance Note include the illustrative formats of auditor's report on consolidated financial statements.

## SECTORAL IMPACT



### AGRICULTURE

- Total allocation for rural, agricultural and allied sectors for 2017-18 is Rs 187223 crore, which is 24% higher than last year.
- Agriculture sector is expected to grow at 4.1%, agriculture expenditure targeted at Rs 10 lakh crore.
- NABARD to be supported for 63,000 functional PACs to be done in 3 years at an estimated cost of Rs. 1,900 cr. Drive in Issuance of soil health cards.
- 40% cropped area to be covered under Fasal Bima Yojana in 2017-18 for insurance of new crop and increased to 50% in 2018-19. A dedicated fund worth Rs. 5,000 crore to be set up for micro-irrigation under NABARD to achieve 'Per Drop More Crop'
- Coverage of National Agricultural Market (e-NAM) to be expanded from 250 markets to 585 APMCs. Assistance up to ` 75 lakhs will be provided to every e-NAM
- The Long Term Irrigation Fund already set up in NABARD to be augmented by 100% to take the total corpus of this Fund to ` 40,000 crores.
- Minilabs by qualified local entrepreneurs to be set up for soil testing in all 648 Krishi Vigyan Kendras in the country.
- Dairy processing infrastructure fund will be set up under NABARD, with fund of Rs. 8,000 crores over 3 years.



### RURAL SECTOR

- Aim to bring one crore households out of poverty and to make 50,000 Gram Panchayats poverty free by 2019
- MGNREGA should create productive assets to improve farm productivity, incomes. MGNREGA allocation increased at Rs. 48,000 crore. Participation of women in MGNREGA up to 55%.
- 100% village electrification to be achieved by May 1, 2018
- Open defecation free villages are now being given priority for piped water supply.
- Sanitation in rural areas has gone up from 42% in October 2014 (launch of Swachh Bharat) to 60%.
- Safe drinking water to cover 28,000 arsenic and Fluoride-affected habitations in the next four years.
- PMGSY roads work accelerated to 133 km roads/day in 2016-17 as against 73km/day during 2011-14
- Allocation for Pradhan Mantri Awaaz Yojana up from 15,000 crores to 23,000 crores with a target to complete 1 crore houses by 2019 for the houseless and those living in kutcha houses.
- Mahila Shakti Kendra at village level for rural women empowerment will be initiated in this financial year.
- Priority to tribal, Dalit, women to setup greenfield enterprises.

## POOR AND UNDER-PRIVILEGED

- Mahila Shakti Kendra will be set up with an allocation of Rs. 500 crores in 14 lakh ICDS Anganwadi Centres to provide one stop convergent support services for empowering rural women with opportunities for skill development, employment, digital literacy, health and nutrition
- Under Maternity Benefit Scheme Rs. 6,000 each will be transferred directly to the bank accounts of pregnant women who undergo institutional delivery and vaccinate their children
- Affordable housing to be given infrastructure status
- National Housing Bank will refinance individual housing loans of about Rs. 20,000 crore in 2017-18
- Action plan to eliminate Kala Azar and Filariasis by 2017, Leprosy by 2018, Measles by 2020 and Tuberculosis by 2025
- Two new AIIMS institutes to be set up in Jharkhand and Gujarat
- Take steps to increase post-graduate seats for medical sciences
- Propose to amend the Drugs and Cosmetics Rules to ensure availability of drugs at reasonable prices and promote use of generic medicines
- For senior citizens, Aadhar based Smart Cards containing their health details will be introduced
- The allocation for Scheduled Castes has been increased by 35% compared to BE 2016-17. The allocation for Scheduled Tribes has been increased to Rs. 31,920 crores and for Minority Affairs to Rs. 4,195 crores



## EDUCATION, SKILLS & JOB CREATION

- A system of measuring annual learning outcomes to be introduced in schools. Emphasis will be given on science education and flexibility in curriculum to promote creativity through local innovative content.
- To focus on the 3,479 educationally backward blocks where the government proposes to introduce the practice of measuring annual learning outcome in schools.
- To establish a National Testing Agency as an autonomous and self-sustained premier testing organisation to conduct all entrance examinations for higher education institutions.
- Use of DTH channels to link online courses available on the Swayam platform, which will offer 350 online courses, to enable student access high-quality education resource.
- A national agency to be instituted that will be in-charge of conducting all entrance exams for higher education. This would free the CBSS and ISCE from their current administrative responsibilities and focus on improving academic milieu.
- Pradhan Mantri Kaushal Kendras to be extended to more than 600 districts across the country. 100 centers to be opened to help youth get access to employment opportunities abroad.
- The Skill Acquisition and Knowledge Awareness for Livelihood Promotion programme (SANKALP) to be



launched at a cost of ` 4,000 crores. SANKALP will provide market relevant training to 3.5 crore youth.

- Skill Strengthening for Industrial Value Enhancement (STRIVE) will be launched in 2017-18 at a cost of ` 2,200 crores to improve the quality and market relevance of vocational training provided in it is.
- A scheme for creating employment in the leather and footwear industries along the lines in Textiles Sector to be launched
- Incredible India 2.0 Campaign will be launched across the world to promote tourism and employment.



## INFRASTRUCTURE & RAILWAYS

- For transportation sector as a whole, including rail, roads, shipping, provision of Rs.2,41,387 crores has been made in 2017-18.
- Service Charges Waived on tickets booked through IRCTC to offer competitive ticketing facility
- Railways will focus on safety, cleanliness, accounting reforms
- Capital and development expenditure pegged at Rs 1.31 lakh cr for railways in 2017-18 from Budget for solar power,

disabled friendly stations. This includes Rs. 55,000 crores provided by the Government

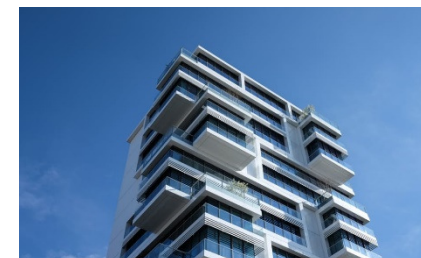
- Railway lines of 3,500 kms will be commissioned in 2017-18. At least 25 stations expected to be awarded during 2017-18; 500 stations will be made differently abled-friendly by providing lifts and escalators
- Unmanned level crossings will be eliminated by 2020
- All coaches of Indian Railways will be fitted with bio-toilets by 2019
- In the road sector, Budget allocation for highways increased from Rs.57,976 crores in BE 2016-17 to Rs.64,900 crores in 2017-18
- 2,000 kms of coastal connectivity roads have been identified for construction and development
- Select airports in Tier 2 cities will be taken up for operation and maintenance in the PPP mode
- Second phase of Solar Park development to be taken up for additional 20,000 MW capacity.
- For creating an eco-system to make India a global hub for electronics manufacturing a provision of Rs. 745 crores in 2017-18 in incentive schemes like M-SIPS and EDF.
- Proposed to set up strategic crude oil reserves at 2 more locations, namely, Chandikhole in Odisha and Bikaner in Rajasthan. This will take our strategic reserve capacity to 15.33 MMT



## FINANCE SECTOR

- The Foreign Investment Promotion Board(FIPB) to be abolished in 2017-18 and FDI Policy would be further liberalised
- The Pradhan Mantri Mudra Yojana (PMMY) was launched for the benefit of bottom of the pyramid entrepreneurs. For 2017-18, the lending target is set it at Rs.2.44 lakh crores. Priority will be given to Dalits, Tribals, Backward Classes, Minorities and Women.
- In line with the 'Indradhanush' roadmap, I have provided Rs. 10,000 crores for recapitalisation of Banks in 2017-18
- Cyber security is critical for safeguarding the integrity and stability of our financial sector. A Computer Emergency Response Team for our Financial Sector (CERT-Fin) will be established.
- The shares of Railway PSEs like IRCTC, IRFC and IRCON will be listed in stock exchanges.
- To create an integrated public sector 'oil major' which will be able to match the performance of international and domestic private sector oil and gas companies.

## AFFORDABLE HOUSING AND REAL ESTATE SECTOR



- In the scheme for profit-linked income tax exemption for promoters of affordable housing scheme, instead of built up area of 30 and 60 sq. mtr. the carpet area of 30 and 60 sq.mtr. will be counted.
- Benefit of the Affordable housing scheme is extended to 5 years.
- For builders for whom constructed buildings are stock-in-trade, the houses which are unoccupied after getting completion certificates are subjected to tax on notional rental income only after one year of the end of the year in which completion certificate is received.
- For Joint Development Agreement signed for development of property, the liability to pay capital gain tax will arise in the year the project is completed
- Persons holding land on 02.06.2014, the date on which the State of Andhra Pradesh was reorganised, and whose land is being pooled for creation of capital city under the Government scheme would be exempt from capital gain tax,

## MISCELLANEOUS

### MEASURES FOR STIMULATING GROWTH

- A concessional with-holding rate of 5% is being charged on interest earned by foreign entities in external commercial borrowings or in bonds and Government securities is extended from 30.6.2017 to 30.6.2020. This benefit is also extended to Rupee Denominated (Masala) Bonds.
- For the purpose of carry forward of losses in respect of such start-ups, the condition of continuous holding of 51% of voting rights has been relaxed subject to the condition that the holding of the original promoter/promoters continues. The profit linked deduction available to the start-ups for 3 years out of 5 years is being changed to 3 years out of 7 years.
- Income tax for smaller companies with annual turnover upto 50 crore is reduced to 25%.
- In order to allow companies to use MAT credit in future years, proposed to allow carry forward of MAT upto a period of 15 years instead of 10 years at present.
- The scheme of presumptive income tax for small and medium tax payers whose turnover is upto 2 crores considered at 8% of their turnover is now proposed at 6% in respect of turnover which is received by non-cash means. This benefit will be applicable for transactions undertaken in the current year also.
- In order to give a boost to banking sector, proposed to increase allowable provision for Non-Performing Asset from 7.5% to 8.5%.
- The basic customs duty on LNG is reduced from 5% to 2.5%.

## PROMOTING DIGITAL ECONOMY

- The BHIM app has been launched for digital payments. The Government will launch two new schemes to promote the usage of BHIM; these are, Referral Bonus Scheme for individuals and a Cashback Scheme for merchants
- Aadhar Pay, a merchant version of Aadhar Enabled Payment System, will be launched shortly. This will be specifically beneficial for those who do not have debit cards, mobile wallets and mobile phones.
- A Mission will be set up with a target of 2,500 crore digital transactions for 2017-18 through UPI, USSD, Aadhar Pay, IMPS and debit cards. Banks have targeted to introduce additional 10 lakh new POS terminals by March 2017. They will be encouraged to introduce 20 lakh Aadhar based POS by September 2017.
- The digital payment infrastructure and grievance handling mechanisms shall be strengthened
- The cash expenditure allowable as deduction, both for revenue as well as capital expenditure is limited to 10,000. Similarly, the limit of cash donation which can be received by a charitable trust is being reduced from Rs. 10,000/- to Rs. 2000/-.
- No transaction above 3 lakh would be permitted in cash
- BCD, Excise/CV duty and SAD on miniaturised POS card reader for m-POS, micro ATM standards version 1.5.1, Finger Print Readers/Scanners and Iris Scanners is made exempt to promote cashless transactions. Simultaneously, I also propose to exempt parts and components for manufacture of such devices, so as to encourage domestic manufacturing of these devices.

## EASE OF DOING BUSINESS

- The Threshold limit for audit of business entities who opt for presumptive income scheme is being increased from Rs.1 crore to Rs.2 crores. Similarly, the threshold for maintenance of books for individuals and HUF is being increased from turnover of 10 lakhs to 25 lakhs or income from 1.2 lakhs to 2.5 lakhs.
- Foreign Portfolio Investor (FPI) Category I & II to be exempt from indirect transfer provision.
- Commission payable to individual insurance agents even if the income of some of them may be below taxable limit is exempt from requirement of TDS subject to their filing a self-declaration that their income is below taxable limit.
- In respect of a new scheme for presumptive taxation for professionals with receipt upto Rs. 50 lakhs per annum, further benefit in terms of paying advance tax in one instalment instead of four is provided.
- The time for completion of scrutiny assessments is being compressed further from 21 months to 18 months for Assessment Year 2018-19 and further to 12 months for Assessment Year 2019-20 and thereafter.
- To rationalise the number of tribunals and merge tribunals wherever appropriate
- To utilise the Head Post Offices as front offices for rendering passport services



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- Budget Speech
- Budget Highlights
- Finance Bill
- Other relevant statutes

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