



Amcon
Anand Mehta & Associates
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Dear Friends,

The Finance Minister, Mr. Arun Jaitley in his 4th Budget has performed a delicate switch of his Government from a pro-rich, pro-town type to a pro-poor, pro-farmer, pro-rural type, in probably one of the largest list of amendments, rationalising several different provisions.

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He has catered to all the pet themes of his Prime Minister. Corporate Tax have been reduced and Incentives are provided for domestic value addition for "Make in India" and "Start up India", while rationalising many exemptions and reductions and introducing a special chapter for foreign companies said to be resident in India. For the poor there are measures for promoting affordable housing. There is a move towards pensioned society. The rich has been taxed with higher surcharge, DDT, additional tax on dividends. There is a move towards simplification by - introducing Direct Tax Dispute Resolution Scheme and compliance through Income Declaration Scheme. There are tax payer friendly measures like ease on getting a stay of demand, time limit on disposing petitions, ease in revising the returns, rationalising Rule 8D relevant to Section 14A and assurance that the government will avoid retrospective legislation.

At the same time the Tax rates have remained the same, Service Tax rate has been marginally increased. There have been promises to make changes in the Companies Act, allow 100% FDI in Food processing. The FM also has provided a lead to the RBI Governor to follow suit.

As usual we have tried to compile and present the Budget in a User friendly manner. We eagerly look forward to your feedback.

Thanks and regards

Anand Mehta
 Director / Advisor

A copy is also available on our website <http://www.amcount.in> This material is prepared by Anand Mehta & Associates Consultants Pvt. Ltd, a Company established earlier under the Indian Companies Act, 1956 and Smart Consultants LLP., a Limited Liability Partnership established under Limited Liability Partnership Act 2008. The focus is on analysis of the Direct and Indirect taxes, especially on the fine print which is reflected more in the comments. The Company chooses not to comment on politics, economics and business. While due care has been taken, no warranty, express or implied, is being made, by the Company as regards the accuracy and adequacy of the information contained herein. The information in this material is not intended to constitute accounting, tax, legal, investment, consulting, or other professional advice or services. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser. This material is intended only for the use of the entity / person to whom it is addressed and the others authorized to receive it on their behalf. The recipient is strictly prohibited from further circulation of this material.



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Union Budget 2017

**FINANCE BILL,
HIGHLIGHTS AND COMMENTS**

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I - DIRECT TAXES



1 - RATES OF TAX

Sr. No.	Subject	
1a	Rates of tax	
	Amended	
Sec.	+ / -	w.e.f.
4	(+)	AY 2017-18

Highlights

Personal tax

1. Income tax rate has been reduced to 5% from 10% for individuals having income between 2.5 lakhs to 5 lakhs.

2. Increase in surcharge from 12 to 15 percent on individual HUF's having income exceeding Rs.1 crore.

Comments

1. Increase the rate of surcharge will raise the maximum marginal rate of tax on the 'super-rich'.

Corporate Tax

1. In case of a domestic company, the corporate tax rate shall be 29% (plus surcharge and cess) if the total turnover/gross receipts of the company in FY 2014-15 does not exceed Rs 5 Crs.

2. Tax rate on newly setup domestic companies engaged solely in manufacture or production of any article or thing proposed to be reduced to 25%, at the option of the company, subject to not claiming certain specified deductions/claims.

3. Clean Energy cess is renamed as Clean Environment Cess. Effective rate of cess increased from `200 per tonne to `400 per tonne.

4. No other changes proposed in corporate tax rates.

Comments

1. This move will encourage entrepreneurship in India. MSMEs and SMEs are major job creators and the reduced corporate tax rate will boost growth.

2. It will promote Make In India initiative of government.

2 - BUSINESS INCOME

Sr. No.	Subject	
2a	Modifications in conditions of special taxation regime for off shore funds	
	Amended	
Sec.	+ / -	w.e.f.
9A	(+)	1 st April 2017

Highlights

1. Eligible investment fund shall now also include a fund established or incorporated or registered outside India in a country or a notified territory in addition to the fund residing in those countries or territories.

2. It has been proposed to restrict the condition of fund not controlling and managing any business in India or from India to only the activities undertaken in India for allowing more flexibility to the operations of funds.

Comment

1. In order to rationalize the regime and to address the concerns of the industry, such amendment is proposed.



Sr. No.	Subject	
2b	Initial additional depreciation for power sector	
	Introduced	
Sec.	+ / -	w.e.f
32(1)(ia)	(+)	1 st April, 2017

Highlights

- Under the existing provisions of section 32(1)(ia) of the Act, additional depreciation of 20% is allowed in respect of the cost of new plant or machinery acquired and installed by certain assessee engaged in the business of generation and distribution of power.
- This depreciation allowance is over and above the deduction allowed for general depreciation under section 32(1)(ii) of the Act.
- Under the existing provisions, the benefit of additional depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of transmission of power.
- Benefit of initial additional depreciation of 20% available on new machinery or plants proposed to be extended to the business of transmission of power.

Comments

- This will encourage the setting up of business of generation and distribution of power.

Sr. No.	Subject	
2c	Rationalisation of scope of tax incentive	
	Amended	
Sec.	+ / -	w.e.f.
32AC (1A)	(+)	1 st April 2016

Highlights

- The existing provision of sub-section (1A) in section 32AC of the Act 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 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.
- It is proposed to amend the sub-section (1A) of section 32AC so as to provide that the acquisition of the plant and machinery of the specified value has to be made in the previous year. However, installation may be made by 31.03.2017 in order to avail the benefit of investment allowance of 15%. It is further proposed to provide that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new asset is installed.

Comments

- The dual condition of acquisition and installation used to cause genuine hardship in cases in which assets having been acquired could not be installed in same previous year.

Sr. No.	Subject	
2d	Phasing out of deductions and exemptions.	
	Amended	
Sec.	+ / -	W.e.f.
Several sections	(+)	1 st April 2017



Highlights

1. Phasing-out of Weighted Deductions (WD)

Section	Proposed phase-out plan
32 Accelerated depreciation	Maximum accelerated depreciation of 40% allowed w.e.f. AY 2018-19 Applicable for both old and new assets
35(1)(ii) Contribution to associations for scientific research	From AYs 2018-19 to 2020-21, weighted deduction of 150% allowed w.e.f. AY 2021-22, deduction of only 100%
35(1)(ia) Contribution to companies for scientific research	w.e.f. AY 2018-19, deduction of only 100%
35(1)(iii) Contribution for statistical research	w.e.f. AY 2018-19, deduction of only 100%
35(2AA) Contribution for approved scientific research programme	w.e.f. AY 2021-22, deduction of only 100%
35(2AB) In-house R & D	From AYs 2018-19 to 2020-21, weighted deduction of 150% allowed w.e.f. AY 2021-22, deduction of only 100%
35AD Specified businesses	w.e.f. AY 2018-19, deduction of only 100%
35CCC Agricultural projects	w.e.f. AY 2018-19, deduction of only 100%

Comments

1. The Finance Minister in his Budget Speech, 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. The Government proposed to implement this decision in a phased manner.

Sr. No.	Subject	
2e	Right to use spectrum	
	Introduced	
Sec.	+ / -	w.e.f.
35ABA	(+)	1 st April 2017

Highlights

1. Deduction in equal instalments in respect of capital expenditure incurred for acquisition of any right to use spectrum for telecommunication services over the period of right to use.

Comments

1. There is uncertainty in tax treatment of payments in respect of Spectrum i.e. whether spectrum is an intangible asset and the spectrum fees paid is eligible for depreciation under section 32 of the Act or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction under section 35ABB of the Act.

2. In order to provide clarity and avoid any future litigation and controversy, such amendment is proposed.

Sr. No.	Subject	
2f	Specified business	
	Amended	
Sec.	+ / -	w.e.f.
35AD	(+)	1 st April 2017

Highlights

1. Deduction in respect of expenditure incurred on specified businesses - Section 35AD

Presently, under this section deduction of certain capital expenditure incurred for specified business is allowable.



The list of specified business has been expanded. Deduction under this section will now also be available for capital expenditure incurred for the business of developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility, which commences its operation on or after 1st April, 2017, where such

(1) Owned by a company registered in India or by a consortium or such companies or by an authority or a board or corporation or any other body established or constituted under any Central or State Act;

(2) The entity referred to above has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining, a new infrastructure facility.

Comments

1. "Infrastructure facility" is defined in the same manner as in section 80IA(4).

Sr. No.	Subject	
2g	Increase in threshold limit for tax audit of persons having income from profession	
	Amended	
Sec.	+ / -	w.e.f.
44AB	(+)	1 st April 2017

Highlights

1. The threshold limit for tax audit under section 44AB, for getting accounts audited proposed to be increased from Rs.25 lakhs to Rs.50 lakhs, in case of persons carrying on profession.

Comments

1. To address the issue of compliance cost in case of small business on account of low threshold of Rs 25 lakhs, the limit is increased to 50 Lakhs.

2. This move will encourage entrepreneurship in India. MSMEs and SMEs are major job creators and the reduced corporate tax rate will boost growth.

Sr. No.	Subject	
2h	Increase in threshold limit for presumptive taxation scheme for persons having income from business	
	Amended	
Sec.	+ / -	w.e.f.
44AD	(+)	1 st April 2017

Highlights

1. The threshold limit for presumptive taxation scheme proposed to be increased from Rs.1 crore to Rs.2 crore, in respect of eligible businesses to bring relief to large number of assesses in the Micro Small and Medium Enterprises (MSME) category.

Comments

1. Currently, 8% of the turnover (of up to Rs 1 crore) is presumed to be income against which a tax levy is imposed at the applicable rate. With increase in threshold limit it will reduce the compliance burden for small businessmen.

Sr. No.	Subject	
2i	Presumptive taxation scheme for professionals.	
	Amended	
Sec.	+ / -	w.e.f.
44ADA	(+)	1 st April 2017



Highlights

1. The presumptive taxation regime proposed to be extended to professionals having gross receipts not exceeding Rs.50 lakhs in the previous year at a rate of 50% of such gross receipts.

Comments

1. In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small tax payers having income from profession and to facilitate the ease of doing business, such amendment is proposed.

Sr. No.	Subject	
2 j	Rationalization of conversion of a company into LLP	
	Amended	
Sec.	+ / -	w.e.f.
47(xiiib)	(+)	1 st April 2017

Highlights

1. 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, if certain conditions are fulfilled, which, inter alia, include a condition that the company's gross receipts, turnover or total sales in any of the preceding three years did not exceed Rs.60 lakh.

2. It is proposed to amend the said section so as to provide that, for availing tax-neutral conversion, in addition to the existing conditions, the value of the total assets in the books of accounts of the company in any of the three previous years preceding the previous year in which the conversion takes place, should not exceed five crore rupees.

Comments

1. The provisions of conversion by company into LLP are made more strict.

Sr. No.	Subject	
2k	Tax incentives for start ups	
	Introduced	
Sec.	+ / -	w.e.f.
54EE and 54GB	(+)	1 st April 2017

Highlights

1. A deduction of 100% of profits and gains derived by eligible start ups from a business involving innovation development, deployment, commercialisation of new products, processes or services driven by technology or intellectual property proposed to be provided. Such benefit would be available to an eligible start-up which is set up before 01.04.2019.

2. The deduction may, at the option of the assessee, be claimed by him for any three consecutive assessment years out of five years beginning from the year in which the eligible start-up is incorporated. MAT will apply in such cases and Capital Gains will not be taxed if invested in regulated/notified Fund or Funds by individuals in notified start ups, in which they hold majority shares.

Comments

1. With a view to provide impetus to start ups and facilitate their growth in the initial phase of their business, the said amendment is proposed.

2. Refer Annexure 1

Sr. No.	Subject	
2 l	Taxation of non-compete fees	
	Amended	
Sec.	+ / -	w.e.f.



28 and 55	(+)	1 st April 2017
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Highlights

1. Taxation of non-compete fees and exclusivity rights in case of profession is proposed to be brought at par with similar income in the case of business.

Comments

1. Non-compete fee received/receivable in relation to carrying out of profession were not covered under existing provisions. To bring the non-compete fee within the scope, such amendment is made.

Sr. No.	Subject	
2m	Tax incentive for employment generation	
	Amended	
Sec.	+ / -	w.e.f.
80JJAA	(+)	1 st April, 2017

Highlights

1. It is proposed to provide that the deduction shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to twenty five thousand rupees per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government.

2. It is further proposed to relax the norms for minimum number of days of employment in a financial year from 300 days to 240 days and also the condition of 10 per cent increase in number of employees every year is proposed to be done away with so that any increase in

the number of employees will be eligible for deduction under the provision.

Comments

1. To extend the employment generation incentive to all sectors, such amendment is proposed.

Sr. No.	Subject	
2 n	Exemption from DDT on distribution made by an SPV to Business Trust.	
	Introduced	
Sec.	+ / -	w.e.f.
115	(+)	1 st June, 2016

Highlights

1. SPV would not be liable to pay DDT on the income distributed to business trusts. Such dividend received by the business trust and its investor shall not be taxable in the hands of trust or investors.

Comments

1. This would facilitate the income to flow to the investors i.e REIT / IITs without any tax leakage.

Sr. No.	Subject	
2o	New Taxation Regime for securitisation trust and its investors	
	Amended	
Sec.	+ / -	w.e.f.
115	(+)	1 st June 2016

Highlights

1. As per the existing tax regime, the income distributed by securitization trust is subject to distribution tax and no tax is levied on distributed income in the hands of investor.

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2. New taxation regime introduced by extending the tax pass through status to certain specified SPVs.

3. Further, income of trust to continue to be exempt and income received by Investor from the trust shall be taxable in the hands of investor in the same manner if the investor would have invested directly.

Comments

1. Disallowance of expenditure in respect of income received from securitisation trust increases the effective rate of taxation. Further, the non-resident and resident investors are unable to take benefits of their specific tax status.

2. In order to rationalise the tax regime for securitisation trust and its investors, and to provide tax pass through treatment, such an amendment is proposed.

Sr. No.	Subject	
2p	Taxation of income from patents	
	Introduced	
Sec.	+ / -	w.e.f.
115BBF	(+)	1 st April, 2017

Highlights

1. It is proposed to introduce patent box regime in India to provide tax @ 10% on gross income arising from royalty in respect of a patent developed and registered in India by a person resident in India.

Comments

1. In order to encourage indigenous research and development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents.

2. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products.

3. This would encourage innovation among Indian residents. For example, a large company would have paid a tax rate of 34.61% but income from royalty on patents developed would attract a lower tax rate of 10%.

Sr. No.	Subject	
2q	Tax on distributed income to shareholder	
	Amended	
Sec.	+ / -	w.e.f.
115QA	(+)	1 st June 2016

Highlights

1. Existing provisions provide for levy of additional income tax @20% of distributed income on account of buyback of unlisted shares by a company.

2. The provisions of this section shall apply to any buy back of unlisted share undertaken by company and shall not be restricted to section 77A of Companies Act, 1956.

Comments

1. Doubts have been raised regarding the effect of buybacks by the company under different provisions of Companies Act, 1956 or Companies Act, 2013.

2. To provide clarity and remove ambiguity, the said amendment is proposed.

3 - HOUSE PROPERTY



Sr. No.	Subject	
3a	Increase in time period for acquisition or construction of self-occupied house property for claiming deduction of interest	
	Amended	
Sec.	+ / -	w.e.f.
24(b)	(+)	1 st April, 2017

Highlights

1. Deduction paid on capital borrowed for acquisition or construction of a self-occupied house property shall be available if the acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed.

Sr. No.	Subject	
3b	Unrealised rent and arrears of rent	
	Amended	
Sec.	+ / -	w.e.f.
25A, 25AA and 25B	(+)	1 st April, 2017

Highlights

1. Existing provisions of sections 25A, 25AA and 25B relate to special provisions on taxation of unrealised rent allowed as deduction when realised subsequently, unrealised rent received subsequently and arrears of rent received respectively. Certain deductions are available thereon.

2. It is proposed to provide that the amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year.

3. It is also proposed that thirty per cent of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.

Comments

1. To simplify the provisions such an amendment is made.

Sr. No.	Subject	
3c	Incentives for promoting "housing for all".	
	Introduced	
Sec.	+ / -	w.e.f.
80EE and 80IBA	(+)	1 st April, 2017

Highlights

1. It is proposed that 100% deduction of the profits would be allowed to an assessee developing and building affordable housing projects, if the housing project is approved by the competent authority before the 31st March, 2019 and completed within 3 years of approval.

2. Additional deduction of interest to "first home buyers". In furtherance of the goal of the Government of providing housing for all, it is proposed to incentivise first-home buyers availing home loans, by providing additional deduction of Rs.50,000 in respect of interest on loan taken for residential house property from any financial institution.

Comments

1. In furtherance of the goal of the Government of providing housing for all, the said amendment is proposed.

4 - CAPITAL GAINS



Sr. No.	Subject	
4a	Tax benefits to Sovereign Gold Bond Scheme, 2015	
	Amended	
Sec.	+ / -	w.e.f.
47 and 48	(+)	1st April, 2017

Highlights

1. Any redemption of Sovereign Gold Bond under the Scheme, by an individual shall not be treated as transfer and therefore shall be exempt from tax on capital gains.
2. Indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all cases of assessees.

Comments

1. This will give incentive for investing in gold bonds instead of the physical form.

Sr. No.	Subject	
4b	Rationalization of Section 50C	
	Amended	
Sec.	+ / -	w.e.f.
50C	(+)	1st April 2017

Highlights

1. It is proposed that where date of agreement fixing amount of consideration for transfer of immovable property and date of registration are not same, the stamp duty value as on date of agreement to be full value of consideration for such transfer provided that consideration is paid by way of an account payee cheque/bank draft/electronic clearing before the date of agreement.

Comments

1. To avoid conflicts rationalization of section 50 C is proposed.

Sr. No.	Subject	
4c	Rationalization of Section 56 of the Income Tax Act	
	Amended	
Sec.	+ / -	w.e.f.
56(2)(vii)	(+)	1st April, 2017

Highlights

1. It is proposed to amend the Act so as to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause (vii) of sub-section (2) of section 56.

Comments

1. The existing provisions of clause(vii) of sub-section 2 of section 56 of the Act provide for chargeability of income from other sources in case any money, immovable property or other property with or without consideration in excess of Rs 50,000 is received by an assessee being an individual or an Hindu undivided family (HUF). The provisions also apply where shares of a company are received as a consequence of demerger or amalgamation of a company. Such a transaction is not regarded as transfer where the recipient is a firm or a company.

2. This will bring uniformity in tax treatment of shares.

Sr. No.	Subject	
4d	Clarification regarding the definition of the term 'unlisted securities' for the purpose of Section 112 (1) (c)	
	Amended	
Sec.	+ / -	w.e.f.



112(1)(c)	(+)	1 st April 2017
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Highlights

1. Existing provisions of clause (c) of sub-section (1) of section 112 provide tax rate of ten per cent for long-term capital gain arising from transfer of securities, whether listed or unlisted.

2. With a view to clarify the position so far as taxability is concerned, it is proposed to amend the provisions of clause (c) of sub-section (1) of section 112 of the Income- tax Act, 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.

Comments

1. The expression "securities" for the purpose of the said provision has the same meaning as in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 (32 of 1956)('SCRA'). A view has been taken by the courts that shares of a private company are not "securities".

5 - INCOME FROM OTHER SOURCES

Sr. No.	Subject	
5a	Rationalisation of taxation of income by way of dividend	
	Amended	
Sec.	+ / -	w.e.f.
115 O	(+)	1 st April, 2017

Highlights

1. The income by way of gross dividend, to be chargeable to tax in the case of an individual, HUF or a firm, who is resident in India @10%, if the same is in excess of Rs. 10 lakh.

Comments

1. Dividends are taxed only @ 15% at the time of distribution in the hands of company. This creates inequity amongst the tax payers as those who have high dividend income are subject to tax only @15%, whereas such income in their hands would have been taxable @30%.

2. To rationalise the tax treatment such an amendment is made.

3. This will ensure that dividend earned by super-rich is also subject to tax in addition to the 15% DDT paid by Indian firms. The maximum effective tax that the dividends bear will be 32.21% (i.e. 20.36%+11.85%) after grossing up.

6 - DEDUCTIONS AND REBATE

Sr. No.	Subject	
6a	Rationalisation of tax treatment of RPFs, PFs and NPS.	
	Amended	
Sec.	+ / -	w.e.f.
80CCD	(+)	1 st April 2017

Highlights

1. Earlier tax treatment for NPS u/s 80CCD is EET (Exempt Exempt Tax) and for super annuation fund, government pension funds is exempt and RPFs are accorded EEE (Exempt Exempt Exempt) status. In order to bring greater parity in tax treatment of different types of pension plans, it is proposed to amend section 10 so as to provide that in respect of the contributions made on or after

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the 1st day of April, 2016 by an employee participating in a recognised provident fund and superannuation fund, up to 40 % of the accumulated balance attributable to such contributions on withdrawal shall be exempt from tax.

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

3. It is also proposed to provide any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme referred to in Section 80CCD, to the extent it does not exceed 40% of the total amount payable to him at the time of closure or his opting out of the scheme, to be exempt from the tax.

Comments

1. This will increase the overall tax liability.

Sr. No.	Subject	
6b	Rationalization of limit of deduction allowable in respect of rents paid	
	Amended	
Sec.	+ / -	w.e.f.
80GG	(+)	1 st April, 2017

Highlights

1. The maximum limit of deduction under section 80GG, in respect of rent paid by individuals who do not get any house rent allowance from the employer and who do not own any house, proposed to be increased from Rs.2,000 p.m. To Rs.5,000 p.m.

Comments

1. Beneficial for middle class tax payer.

2. This will allow the individual to claim an additional deduction of Rs 36,000 pa, leading to a tax-saving of up to Rs 13,015.

Sr. No.	Subject	
6c	Rationalization of limit of rebate in Income-tax allowable.	
	Amended	
Sec.	+ / -	w.e.f.
87A	(+)	1 st April, 2017

Highlights

1. With the objective to provide relief to resident individuals in the lower income slab, it is proposed to amend section 87A so as to increase the maximum amount of rebate available under this provision from existing Rs.2,000 to Rs.5,000.

Comments

1. Beneficial for middle class tax payer.

2. This will ensure an additional saving of Rs 3,090 for small taxpayers.

7 - INTERNATIONAL TAXATION

Sr. No.	Subject	
7a	Deferment of POEM	
	Amended	
Sec.	+ / -	w.e.f.
6	(+)	1 st April 2017

Highlights

1. The determination of residency of foreign company on the basis of (POEM) is proposed to be deferred by one year.

Comments



1. This will bring significant relief to NRIs and Indian companies having overseas subsidiaries.

Sr. No.	Subject	
7b	Exemption in respect of certain activity related to diamond trading in "Special Notified Zone".	
	Amended	
Sec.	+ / -	w.e.f.
9	(+)	1 st April, 2016

Highlights

1. It is proposed that income of a foreign company engaged in the business of mining of diamonds shall not have a business connection in India merely by reasons of its activities which are confined to display of uncut or unsorted diamonds in a special zone notified by the Central Government.

Comments

1. To encourage business of mining of diamonds, such amendment is proposed.

Sr. No.	Subject	
7c	Exemption of income of Foreign company from storage and sale of crude oil stored as part of strategic reserves	
	Amended	
Sec.	+ / -	w.e.f.
10	(+)	1 st April 2016

Highlights

1. It is proposed that any income, accruing or arising to a foreign company on account of storage of crude oil in a facility in India, or on account of its sale therefrom to any person resident in India, shall be exempt from taxation if such storage or sale is in pursuance

of an agreement or arrangement with Central Government that is notified.

2. The amendment will take effect from assessment year 2016-17.

Comments

1. To encourage investment in crude oil, such amendment is proposed.

Sr. No.	Subject	
7d	Tax Incentives to International Financial Services Centre	
	Amended	
Sec.	+ / -	w.e.f.
10(38)	(+)	1 st April 2017

Highlights

In order to promote International Financial Services Centre, following benefits are introduced:

1. Exemption from long term capital gains on transaction in foreign currency on recognized stock exchange in IFSC even when Securities Transaction Tax (STT) is not paid.

2. Applicability of concessional rate of MAT at 9% on units in IFSC deriving its income wholly in convertible foreign exchange.

3. Exemption on dividends distributed by units located in IFSC (deriving their income wholly in convertible foreign exchange) in the hands of company paying the dividend as well as Shareholders.

4. Exemption from STT and Commodities Transaction Tax (CTT) on transactions undertaken in foreign currency on recognized stock exchange/recognized association in IFSC.

Sr. No.	Subject
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7e	BEPS action plan - Country-By-Country Report and Master file	
	Amended	
Sec.	+ / -	w.e.f.
92 - 92F	(+)	1 st April 2017

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Highlights

1. In order to implement the international consensus on Action 13 of the Organisation for Economic Cooperation and Developments (OECDs) Base Erosion and Profit Shifting (BEPS) project, the Finance Bill 2016 proposes to introduce the Country by Country (CbC) reporting requirement and the concept of master file in the Indian Income Tax Act, 1961.

2. The core elements of the concept have been proposed by the Bill and the remaining provisions will be detailed in the Income Tax Rules.

3. The provisions relating to CbC reporting requirement as proposed by the Bill are as follows:

- a. The provisions will be effective 1 April 2017 and will apply from Financial Year 2016-17.
- b. The reporting provisions shall apply to an international group (a group that operates in two or more jurisdictions) having consolidated revenues exceeding the prescribed threshold. The current OECD mandated threshold is 750 million (approximately `5395 crores, at current exchange rate).
- c. If the parent entity of an international group is resident in India, it is required to furnish the CbC report in respect of the group by the due date of furnishing of return of income for the relevant Financial Year. Accordingly, an Indian

parent company will need to furnish the first CbC report by 30 November 2017 for the Financial Year 2016-17.

- d. An entity in India of an international group having an overseas resident parent is required to provide the details of the country of residence of the parent by the prescribed date to the prescribed Indian tax authority.
- e. An Indian entity belonging to an international group with an overseas parent shall be required to furnish the CbC report to the prescribed authority if the parent entity of the group is resident:
 - i. in a country with which India does not have an arrangement for exchange of the CbC report; or
 - ii. there is a systematic failure of the country in exchanging the said information with India even though there is an agreement; and
 - iii. this fact has been intimated to the entity by the prescribed authority
- f. The CbC report would be furnished in the prescribed manner and form and will contain (in line with the OECD template) aggregate information in respect of revenue, profit and loss before Income-tax, amount of Income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets (other than cash or cash equivalent) in respect of each country or territory; along with details of each constituent's residential status, nature and details of main business activity as well as any other information as may be prescribed.
- g. In cases where more than one entity of an overseas parent group are present in



India, the group can nominate (in writing to the prescribed authority) the entity that shall furnish the report on behalf of all the Indian entities.

- h. The prescribed authority may call for necessary documents and information from the entity furnishing the report for the purpose of verifying the accuracy of the same
- i. For non-furnishing of the CbC report by an entity which is obligated to do so, a graded penalty structure applies that ranges from Rs.5,000 to Rs.50,000 per day.
- j. In case of inaccurate furnishing of information or furnishing of inaccurate information in response to notice by the prescribed authority, a penalty of Rs.500,000 may also be levied.
- k. A parent entity means the entity holding an interest (directly or indirectly) in the other entities of the group such that it is required to prepare a consolidated financial statement of the group.

4. The Memorandum to the Finance Bill provides that rules for the requirement for maintenance of master file would be prescribed which would be as mandated under OECD BEPS Action 13.

5. For non-furnishing of the information and documents on the prescribed due date penalty of Rs.500,000 is prescribed.

Comments

1. This provision is aimed at alignment of domestic tax law with the OECD recommendations on BEPS action plan on the digital economy. This provision would impact the income of non-resident e-commerce giants providing online advertising services

(such as, Google, Yahoo, etc) or other services to the companies in India.

Sr. No.	Subject	
7f	MAT on foreign companies for the period prior to 01.04.2015	
	Amended	
Sec.	+ / -	w.e.f.
115JB(1)	(+)	1 st April 2001

Highlights

1. Under the existing provisions contained in sub-section (1) of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of its book profit.

2. it is proposed to amend the Income-tax Act so as to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if -

- i. the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or
- ii. the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

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Comments

1. Issues were raised regarding the applicability of this provision to Foreign Institutional Investors (FIIs) who do not have a permanent establishment (PE) in India. Vide Finance Act, 2015 of the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back.

2. However, since this amendment was prospective w.e.f. assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

Sr. No.	Subject	
7g	Exemption from requirement of furnishing PAN to certain non-resident	
	Amended	
Sec.	+ / -	w.e.f.
206AA	(+)	1 st June 2016

Highlights

1. In order to reduce compliance burden, section 206AA proposed to be amended so as to provide that the provisions of this section shall 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.

Comments

1. This will bring significant relief to NRIs.

Sr. No.	Subject
7h	Equalisation levy

	Introduced	
Sec.	+ / -	w.e.f.
Chapter VIII	(+)	1 st June 2016

Highlights

1. It is proposed that a person making payment to a non-resident, who does not have a permanent establishment, exceeding in aggregate Rs. 1 lakh as consideration for online advertisement, will withhold tax at 6% of gross amount paid. The levy will only apply to B2B transactions.

Comments

1. In order to tap tax on income accruing from e-commerce transactions to non-residents from India, the said amendment is proposed.

8 - TRANSFER PRICING

Sr. No.	Subject	
8a	Extension of time limit to Transfer Pricing Officer in certain cases	
	Amended	
Sec.	+ / -	w.e.f.
92CA	(+)	1 st June 2016

Highlights

1. As per the existing provisions, the Transfer Pricing Officer (TPO) has to pass his order sixty days prior to the date on which the limitation for making assessment expires.

2. Extension of time limit to the Transfer Pricing Officer for completion of assessment where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority.

Comments



1. It was noted that at times seeking information from foreign jurisdictions became necessary for determination of arm's length price by the TPO and at times proceedings before the TPO were also stayed by a court order.

9 - CHARITABLE TRUST

Sr. No.	Subject	
9a	Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organization.	
	Introduced	
Sec.	+ / -	w.e.f.
11 and 12	(+)	1 st June 2016

Highlights

1. Additional income tax at maximum marginal rate levied when a charitable organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable organization.

Comments

1. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act is required for imposing a levy in the nature of an exit tax which is attracted when the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable Organisation.

10 - INCOME DECLARATION SCHEME, 2016

Sr. No.	Subject	
10a	The Income Declaration Scheme, 2016	
Sec.	+ / -	W.e.f.
Chapter IX	(+)	1 st June 2016

Highlights

1. Immunity has been granted from further scrutiny under the income tax Act in cases where the tax payer declares domestic undisclosed income and pays 45% thereof (tax of 30%, surcharge of 7.5% and penalty of 7.5%). A window is available between 1st June, 2016 and 30th September 2016 for such declaration.

Comments

1. Considering the immunity from prosecution and scrutiny assessment enquiry, the proposed scheme could be a good opportunity for some errant taxpayers for disclosure of their undisclosed income.

2. Cases not eligible for the scheme-

- where notice have been issued u/s 142(1) or 143(2) or 148 or 153A or 153C, or
- where search or survey has been conducted,
- where information is received under an agreement with the foreign countries regarding such income,
- cases covered under Black Money Act, 2015, or
- persons notified under Special Court Act, 1992, or
- cases covered under Indian Penal Code, The Narcotic Drugs and Psychotropic Substances Act, 1985, The Unlawful Activities Act, 1967, the Prevention of Corruption Act, 1988.

11 - DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016



Sr. No.	Subject	
11a	The Direct Tax Dispute Resolution Scheme, 2016	
Sec.	+ / -	w.e.f.
Chapter X	(+)	29 th Feb. 2016

Highlights

1. New Tax Dispute Resolution Scheme introduced for reducing tax disputes in relation to two types of taxes:

- a. Specified Taxes - defined as any tax determined consequent to or validated by amendment made with retrospective effect in Income Tax Act 1961 or Wealth Tax Act 1957 and dispute in respect of such tax is pending as on 29 February 2016. For being eligible for availing benefit, assessee is required to withdraw writ/appeal/request for arbitration before concerned authorities. The declarant shall get immunity from penalty and prosecution under the respective Acts. Further, scheme also provides for waiver of interest under the respective Acts.
- b. Tax Arrears - defined as tax, interest or penalty determined under the Income Tax Act 1961 or Wealth Tax Act 1957 in respect of which appeal is pending before Commissioner of Income Tax (Appeals) or Commissioner of Wealth Tax (Appeals) as on 29 February 2016. For being eligible, declarant is required to pay applicable taxes plus interest up to the date of assessment. In case disputed tax exceeds 10 lakhs, 25% of minimum penalty leviable will also be

payable. Declarant shall get immunity from any prosecution under the respective Acts.

Comments

1. Litigation has been a major area of concern in direct taxes. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, it is proposed to bring the Direct Tax Dispute Resolution Scheme, 2016 in relation to tax arrear and specified tax.

12 - TDS / TCS PROVISIONS

Sr. No.	Subject	
12a	Rationalization of TDS provisions relating to payments by Category-I and Category-II Alternate Investment Funds to its investors.	
	Amended	
Sec.	+ / -	w.e.f.
10(23FBA), 10(23FBB), 115UB and 194LBB	(+)	1 st June, 2016

Highlights

1. The existing provisions of section 194LBB provides that in respect of any income credited or paid by the investment fund to its investor, a tax deduction at source (TDS) shall be made by the investment fund @ 10% of the income. Under section 197 of the Act, facility for certificate for deduction of tax at lower rate or no deduction is available in respect of sections enumerated therein, if the Assessing Officer is satisfied that total income of the recipient justifies issue of such certificate, section 194LBB is currently not included in this provision.



2. It is proposed to amend section 194LBB to provide that the person responsible for making the payment to the investor shall deduct income-tax under section 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. Further, it is proposed to amend section 197 to include section 194LBB in the list of sections for which a certificate for deduction of tax at lower rate or no deduction of tax can be obtained. Consequential changes are also proposed to be made to the definition of "rates in force" so as to include section 194LBB in it.

3. Presently, TDS under section 194-I is deducted even in cases where the recipients total income (including rental income) is Nil. Section 197A provides for no TDS (in certain cases) if recipient furnishes a declaration (in Form 15G/15H) to payer declaring Nil taxability. Benefit of section 197A to be extended to recipients earning rental income. This will bring huge relief to senior citizens and small taxpayers who have nil taxable income or income below the threshold limit but had to file I-T return to claim refunds of TDS deducted on rental income.

Comments

1. It has been represented that the existing TDS regime has created certain difficulties. The non-resident investor is not able to claim benefit of lower or NIL rate of taxation which is available to him under the relevant Double Taxation Avoidance Agreement (DTAA), and deduction of tax @10% is to be undertaken mandatorily even if under DTAA, the income is not taxable in India. There is no facility for any investor to approach the Assessing Officer for seeking certificate for TDS at a lower or NIL rate in respect of deductions made under section 194LBB.

Sr. No.	Subject
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12b	Rationalization of TDS provisions	
Sec.	+ / -	w.e.f.
192A, 194BB, 194C, etc	(+)	1 st June 2016

Highlights

1. In order to rationalise the rates and base for TDS provisions, the existing threshold limit for deduction of tax at source and the rates of deduction of tax at source are proposed to be revised in the case of following:

Increase in threshold limit of deduction of tax at source on various payments			
Present section	Heads	Existing threshold Limits (Rs.)	Proposed Threshold Limits (Rs.)
192A	Payment of accumulated balance due to an employee	30000	50000
194BB	Winnings from Horse Race	5000	10000
194C	Payments to Contractors	Aggregate annual limit of 75000	Aggregate annual limit of 100000
194LA	Payment of Compensation on acquisition of certain	200000	250000
194D	Insurance commission	20000	15000
194G	Commission on sale of lottery tickets	1000	15000
194H	Commission or brokerage	5000	15000

Revision in rates of deduction of tax at source on various payments mentioned in the relevant sections



of the Act			
Present Section	Heads	Existing Rate of TDS (%)	Proposed Rate of TDS (%)
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission	Rate in force (10%)	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

Present section	Heads	Proposal
194K	Income in respect of Units	To be omitted w.e.f 01.06.2016
194LA	Payment of Compensation on acquisition of Capital Asset	To be omitted w.e.f 01.06.2016

Comment

1. The move is aimed at rationalizing TDS provisions and reduce tax outflow in the hands of small tax payers.

Sr. No.	Subject	
12c	Tax collection at source (TCS) on sale of vehicles; goods or services.	
	Introduced	
Sec.	+ / -	w.e.f.
206C	(+)	1 st June 2016

Highlights

1. It is proposed to provide that the seller shall collect tax @1% from purchaser on sale of motor vehicle of value exceeding 10 lacs and sale in cash of any goods (other than bullion and jewellery), or providing any services exceeding 2 lacs.

Comments

1. This proposal would help the tax department to monitor and curb use of black money. At the same time, this would increase the compliance burden of the vendors.

13 - ADVANCE TAX

Sr. No.	Subject	
13a	Advance tax instalment and interest	
	Amended	
Sec.	+ / -	w.e.f.
211 and 243(C)	(+)	1 st June, 2016

Highlights

1. Presently advance tax payment schedule is different for company and non-company assessee. It is proposed to provide one advance tax payment schedule for all assessee other than an eligible assessee in respect of eligible business referred to in section 44AD who shall be required to pay entire advance tax in one installment on or before the 15th March of the financial year.

Payment of advance tax schedule

Particulars	Existing		Proposed
	Non corporate	Corporate	All assessee (Except eligible)



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			assessee u/s 44AD)
Due date of installment	% of tax payable	% of tax payable	% of tax payable
On or before 15 th June	-	15%	15%
On or before 15 th September	30%	45%	45%
On or before 15 th December	60%	75%	75%
On or before 15 th March	100%	100%	100%

Comments

1. Based on the recommendations of Expenditure Management Commission clubbed with the fact that most of the advance tax is now paid electronically it is proposed to rationalise the schedule.

14 - ASSESSMENT AND APPELLATE PROCEEDINGS

Sr. No.	Subject	
14a	Assumption of jurisdiction of Assessing Officer	
	Amended	
Sec.	+ / -	w.e.f.
124	(+)	1 st June 2016

Highlights

1. The existing section 124(3) provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer in a case where return is filed u/s 139, after the expiry of one month from the date on which he was served with a notice issued u/s 142(1) or section 143(2) or after the completion of the assessment, whichever is earlier.

2. Currently, this provision does not specifically refer to notices issued u/s. 153A or 153C which

relate to assessment in cases where a search and seizure action has been taken or cases connected to such cases.

3. It is now provided that the provisions of section 124(3) would be extended to cases where search is initiated u/s. 132 or books of account, other documents or any assets are requisitioned u/s. 132A whereby no person would be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice u/s 153A(1) or section 153C(2) or after the completion of the assessment, whichever is earlier.

Comments

1. Instances have come to notice wherein the jurisdiction of an Assessing Officer in such cases have been called into question at the appellate stages, despite the fact that order passed under section 153A or 153C is read with section 143(3) of the Act. In order to remove any ambiguity in such cases such amendment is proposed.

Sr. No.	Subject	
14b	Filing of return of income	
	Amended	
Sec.	+ / -	w.e.f.
139(1)	(+)	1 st April 2017

Highlights

1. It is proposed that every person whose income, without giving effect to income exempt under section 10(38), exceeds maximum amount not chargeable tax shall furnish return of income for the relevant assessment year within the due dates.

2. It is proposed that time limit to file the belated return has been curtailed from one year from the end of relevant assessment year to the end of the relevant assessment year.



3. It is proposed that that belated tax return can now be revised on or before expiry of one year from the end of relevant assessment year or before the completion of assessment, whichever is earlier.

4. It is further proposed to provide that return of income would not be regarded as defective merely because self-assessment tax and associated interests have not been paid within the statutory time limits.

Comments

1. This will reduce the time-limit for filing a belated return to one year from two years and encourage timely compliance. Revision of belated return will now be permitted, which was not possible earlier.

Sr. No.	Subject		
14c	Processing of return		
	Amended		
Sec.	+ / -	w.e.f.	
143(1D) and 143(1)	(+)	1 st April 2017	

Highlights

1. Currently section 143(1D) provide that return of income need not be processed u/s 143(1), if notice has been issued u/s 143(2). It is now provided that before issuing an assessment u/s 143(3), the return shall be processed u/s 143(1)

2. Scope of section 143(1) expanded to include adjustments on the basis of data available with tax department in the form of audit report, past returns, 26AS and Form 16/16A, after providing opportunity to assessee.

Comments

1. This is a welcome move which would require tax authorities to mandatorily process the return and release timely refunds to tax payers, if any.

Sr. No.	Subject		
14d	Providing legal framework for automation of various processes and paperless assessment		
	Amended		
Sec.	+ / -	w.e.f.	
143 and 2(23C)	(+)	1 st June 2016	

Highlights

1. In order to put in place a framework of automated paperless assessments and related procedures, amendment made to provide that notices and documents can be issued either in paper form or electronic form. It has been proposed to define the term 'hearing' to include communication of data and documents through electronic mode.

Comments

1. This will lead to an increase in paperless assessment and less face-to-face interaction between taxpayer and income-tax officers.

2. This will not provide an opportunity to disabuse the mind of the Assessing Officer.

Sr. No.	Subject		
14f	Income escaping assessment		
	Amended		
Sec.	+ / -	w.e.f.	
147	(+)	1 st June 2016	

Highlights

1. This section empowers the Assessing Officer to reopen the assessment if he has reason to



believe that any income chargeable to tax has escaped assessment.

2. New clause has been inserted in Explanation 2 to section 147 to provide that income chargeable to tax shall be deemed to have escaped assessment either where the return of income has not been furnished or where based on information received u/s 133C(2), it is noticed by the Assessing Officer that the income exceeds the maximum amount not chargeable to tax or where the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

Sr. No.	Subject	
14g	Rationalisation of time limit for assessment, reassessment and recomputation	
	Amended	
Sec.	+ / -	w.e.f.
153	(+)	1 st June 2016

Highlights

1. Amended timelines for assessment, reassessment and re-computation

Proceedings	Existing Time Lines	Proposed Time Lines
Section 143(3)/144	2 years from end of assessment year	21 months from end of assessment year
Fresh assessment in pursuance of order u/s 254/263/264	1 year from the end of financial year in which order u/s 254 is received or order u/s 263/264 is passed by the prescribed authority	9 months from the end of financial year in which order u/s 254 is received or order u/s 263/264 is passed by the prescribed authority

Effect to appellate order or 263/264 order or order of settlement commission wholly or partly without fresh assessment or reassessment*	No timelines at present	Similar changes have been made to time limits for assessment in search cases
If proposed timelines cannot be met by the AO for reason beyond control, AO may apply, in writing, to PCIT or CIT to allow additional time of 6 month. For cases pending as on 1 June 2016, time limit to be extended to 31 March 2017.		
Effect to appellate order or 263/264 order or order of any court requiring assessment, reassessment or recomputation.	No timelines at present	12 months from the end of the month in which order is received by the relevant authority.
For cases pending as on 1 June 2016, proposed time limit to be 31 March 2017 or 12 months from the end of the month in which such order is received, whichever is later.		
Applicable to all aforesaid orders to be passed on or after 1 June 2016.		
Similar changes have been made to time limits for assessment in search cases.		

Sr. No.	Subject	
14h	Rationalisation of the provisions relating to Appellate Tribunal	
	Amended	
Sec.	+ / -	w.e.f.
252(3)(b), 252(4A) and 252(5)	(+)	1 st June 2016

Highlights

1. It is proposed to omit the right of the tax department to appeal against the order of the assessing officer in pursuance of the direction of Dispute Resolution Panel.
2. The time limit for rectification of order u/s 254(2) by the Appellate Tribunal is proposed to be reduced from 4 years to 6 months.

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Comments

1. This proposal would reduce long drawn litigation. At the same time, it may discourage the DRP from deciding even slightly debatable issues in the taxpayer's favour.

could be imposed for under reporting and misreporting of income respectively.

2. Penalty @ 50% of tax payable is applicable in case of under reporting and @ 200% in case of misreporting.

Sr. No.	Subject	
14 i	Cases heard by single member of the Appellate Tribunal	
	Amended	
Sec.	+ / -	w.e.f.
255(3)	(+)	1 st June 2016

Comments

1. Provisions are rationalized to aim at bringing objectivity, certainty and clarity in the penalty provisions and reduce arbitrary action by the tax authorities.

Highlights

1. Section 255(3) provides that a Single Member Bench of the Tribunal may dispose of any case which pertains to an assessee whose assessed income does not exceed Rs.15 lakh.

Sr. No.	Subject	
15b	Immunity from penalty and prosecution	
	Introduced	
Sec.	+ / -	w.e.f.
270AA	(+)	1 st April 2017

2. The limit of Rs.15 lakh has now been increased to Rs.50 lakh. Accordingly a Single Member Bench may now dispose of any case where the assessed income does not exceed Rs.50 lakh. The amendment is effective from 1st June, 2016.

Highlights

1. Section 270AA is proposed to be introduced under the Act which shall contain provisions providing for immunity from penalty and prosecution. To be eligible to avail the same, assessee is required to timely deposit the tax and interest into the Government treasury and should not litigate the matter in appeal. Such immunity is not available in cases of misreporting.

15 - PENALTY AND IMMUNITY

Sr. No.	Subject	
15a	Penalty on concealment	
	Introduced	
Sec.	+ / -	w.e.f.
270 A and 271	(+)	1 st April 2017

2. Application for immunity to be made within one month from the end of the month in which assessment order is received. AO shall decide the application on merits and his order shall be final.

Highlights

1. Section 271(1)(c) has been substituted with Section 270A with effect from AY 2017-18. It prescribes certain scenarios wherein penalty

Comments

1. The crowning glory of new penalty provisions is that the taxpayer, who till now had been denied a chance to present his



case has now got a boon. Now, no order shall passed, rejecting application of assessee, without an opportunity to be heard.

Sr. No.	Subject	
15c	Penalty for non-compliance	
	Amended	
Sec.	+ / -	w.e.f.
272A and 271	(+)	1 st April 2017

Highlights

1. Failure to comply with statutory notices under section 142(1)/143(2)/142(2A) shall attract a penalty of Rs.10,000 for each of such default and failure.

16 - MISCELLANEOUS AMENDMENTS :

1. Benefit of deduction in respect of provision for bad and doubtful debts extended to NBFCs.

2. Scope of section 43B extended to include payments made to Railways for the use of their assets.

3. Rate of Oil Industries Development cess reduced on domestically produced crude oil from Rs.4500 per metric tonne to 20% ad valorem Infrastructure cess is being levied on motor vehicles.

4. Interest on refund under section 244A rationalized to provide for interest under certain new situations.

5. Assessee is provided with an option to furnish bank guarantee for revocation of the provisional attachment made under section 281B.

6. Presently, the securities transaction tax on sale of an option in securities where option is not exercised is 0.017 per cent of the option

premium. It is proposed to increase the rate from 0.017 per cent.to 0.05 per cent.

7. In order to provide parity in tax treatment between the physical gold and Bond, it is proposed to exempt redemption of the Bonds by an individual.

8. In case of Rupee Denominated Bonds (RDBs) where the currency risk is borne by thenon-resident investor, it is proposed that any capital gains on appreciation of rupee between date of issue and date of redemption of RDBs will be exempt.This will attract non-resident investors to rupee-denominated bonds and help Indian companies raise funds abroad.

9. Loss determined as per section 73A of the Act shall not be allowed to be carried forward and set off if such loss has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139.

10. Disallowance u/s 14A r.w. Rule 8D 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.

11. Subsidy or grant by the Central Government - Section 2(24)(xviii)

12. Presently any subsidy or grant received from the Central or State Government is included as income, except where such grant or subsidy is taken into account for determination of the actual cost of the asset as provided in explanation 10 of section 43(1). As a result, subsidy or grant by the Central Government for budgetary support of a trust or any other entity formed specially for operationalising certain Government schemes would also have been taxed in the hands of such entities. The section is now amended to provide that subsidy or grant by

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the Central Government for the purpose of the corpus of the trust or institution established by the Central or State Government shall be excluded from the definition of income.

13. Exclusion from total income of accumulated balance - Fourth Schedule Part A - Rule 6 & Rule 8

Presently, contribution by the employer in excess of 12% of the employee's salary is chargeable to tax.

Fourth Schedule of the Act has been amended to effectively provide that only lower of Rs.1,50,000 or 12% of salary shall be exempt in the hands of employee in respect of employer's contribution to recognised provident fund.

There will also be exemption for one-time portability of funds from recognised provident or from approved superannuation fund to NPS referred to in section 80CCD.

14. Carry forward and set-off of losses of specified business covered u/s. 35AD - Sections 80 and 139(3)

Presently, section 73A provides for set-off of loss incurred in respect of any specified business as referred to in section 35AD(8)(c) only against the profits and gains of any other specified business. It is now provided that unabsorbed loss can be carried forward and set off against the profits of subsequent years only if the return of income for the assessment year in which the loss is incurred is furnished before the due date of filing the return of income as provided in section 139(1). Appropriate amendment is made in section 80 also. These amendments will apply from the assessment year 2016-17.

15. Special provision in respect of newly established units in Special Economic Zones (SEZ) - Section 10AA

Under the existing provisions, deduction is available when the manufacture or production of articles or things or provision of any services commences during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006. It is now provided that the deduction would be available in respect of the eligible business which is commenced before 1st April, 2021.

II- INDIRECT TAXES

SERVICE TAX

1 - EFFECTIVE RATE OF SERVICE TAX

Sr. No.	Subject	
1	Rate of service tax	
	Amended	
Sec.	+ / -	w.e.f.
66B	(-)	1 st June 2016

Levy of "Krishi Kalyan Cess" at 0.5% with effect from 1st June 2016.

Particulars	Prior to Budget	Post Budget
Basic Rate	14.00%	14.00%
Swacch Bharat Cess	0.50%	0.50%
Krishi Kalyan Cess	-	0.50%
Effective Rate of Tax	14.50%	15.00%

Comments

1. Credit of Krishi Kalyan Cess paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider.

2. Cenvat credit is allowed of the Krishi Kalyan Cess paid on the input services but credit of Swacch Bharat Cess is not permissible under Cenvat Credit Rules.



3. The effective alternate tax rates for the following specified services will also be enhanced by the proposed Krishi Kalyan Cess w.e.f. 1st June 2016 -

- a. Air Travel Agent Service
- b. Life Insurance Service
- c. Purchase and sale of foreign currency
- d. Distribution of lottery tickets

4. From 1st April 2016, Service Tax on single premium annuity (insurance) policies is being reduced from 3.5% to 1.4% 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, with effect from 1st April, 2016.

(It is to be noted that Cenvat Credit Rules have not yet been amended to provide for cenvat allowability of Krishi Kalyan Cess, but the Finance Minister in his Budget Speech has clarified that the Cess will be Cenvatable.)

2 - NEGATIVE LIST

The following service will not be covered under Negative list (i.e. It will become liable to Service Tax)

Sr. No.	Subject	
2	Negative list	
	Amended	
Sec.	+ / -	w.e.f.
66D	(-)	Date of assent

Highlights

2a. Specified Educational Services

Comments

1. Specified educational service which were covered under clause (I) of Section 66D are omitted from the Negative List but the service

tax exemption on them is being continued by incorporating them in the general exemption notification 25/2012-ST.

2. Therefore there is no effect on the taxability of the Specified educational services and such services will not be chargeable to service tax.

3. Specified education service includes education upto 12th, any educational qualification recognised by the law for the time being in force or approved vocational courses.

Highlights

2b. Service of transportation of passengers, with or without accompanied belongings, by a stage carrier .

Comments

1. However, such services by a non-air-conditioned contract carriage will continue to be exempted by way of exemption notification No. 25/2012-ST. The service of transportation of passengers by air-conditioned stage carriage is being taxed at the same level of abatement (60%) as applicable to the transportation of passengers by a contract carriage, with same conditions of non-availment of Cenvat credit. (w.e.f. 1st June 2016)

Highlights

2c. Service 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.

Comments

1. However such services by an aircraft will continue to be exempted by way of exemption notification No. 25/2012-ST.



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2. The domestic shipping lines registered in India will pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the hands of the business entity w. e. f. 1st June 2016. The service tax so paid will be available as credit with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions).

3. It is clarified that service tax levied on such services shall not be part of value for custom duty purposes. In addition, Cenvat credit of eligible inputs, capital goods and input services is being allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India. Consequential amendments are being made in Cenvat Credit Rules, 2004.

4. Thus any manufacturer or service provided importing any goods or machinery through Foreign Shipping line, the manufacturer or service provider will have to pay service tax under Reverse Charge Mechanism and in case through Indian Shipping line, it will be under forward charge. In both case, cenvat will be allowed of the Service tax paid on such ocean freight.

3 - DECLARED SERVICE

Sr. No.	Subject	
3	Declared service	
	Amended	
Sec.	+ / -	w.e.f.
66E	(+)	1 st June 2016

Highlights

3a. The service in relation to assignment by the Government of the right of use the radio-frequency spectrum and its subsequent

transfer shall be considered as a Declared Service as per Section 66E(j)

Comments

1. The amendment makes clear that such arrangement will be liable to Service tax and will not be considered as sale of Intangible goods.

4 - PAYMENT OF SERVICE TAX

Sr. No.	Subject	
4	Payment of service tax	
	Amended	
Sec.	+ / -	w.e.f.
Rule 6	(+)	1 st April 2016

Highlights

4a. "One Person Company" and HUF can pay quarterly Service tax.
(w.e.f. 1st April 2016)

Monthly Payment	Quarterly Payment
Company	Individual
AOP/BOI	Partnership Firm
Trust	LLP
	HUF
	One Person Co

One Person Company shall also be allowed to pay service tax on receipt basis where value of aggregate service is upto 50 lacs rupees.

5 - INTEREST ON DELAYED PAYMENT

Sr. No.	Subject	
5	Interest on delayed payment	
	Amended	
Sec.	+ / -	w.e.f.
75	(+)	1 st June 2016



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Highlights

5a. Interest rates on delayed payment of duty/tax across all indirect taxes is proposed to be made uniform at 15%, except in case of service tax collected but not deposited with the Central Government, in which case the rate of interest will be 24% from the date on which the service tax payment became due. In case of assessees, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of service tax will be 12%.

Comments

1. Prior to this amendment, interest on delayed payment of service tax was 18%/24%/30% - i.e. upto 6 moths / next 6 months / after 12 months.

2. The earlier rate of interest **can be** considered as penal in nature, rather than compensatory and which can be disallowed under Section 37(1) of the Income Tax Act considering its penal nature. The decrease in rate of interest is welcomed decision as it will lead to much lesser litigations with respect to disallowance of interest payments.

6 - POINT OF TAXATION RULES 2011

Sr. No.	Subject	
6	Point of taxation	
	Amended	
Sec.	+ / -	w.e.f.
Rule 5	(+)	1 st March 2016

Highlights

6a. Rule 5 of the Point of Taxation Rules 2011 shall also be applicable in case of new levy on services.

Rule 5 is applicable in case where service is taxed for the first time. It is now clarified that

Rule 5 shall also made applicable in case of new levy on service.

Comments

1. Thus applicability of Krishi Kalyan Cess will be covered under Rule 5 of the Point of Taxation Rules.

2. Therefore, new levy or tax (including Krishi Kalyan Cess) shall be payable in all cases other than,

- i. to the extent an invoice is issued and payment is received against such service before it becomes taxable;
- ii. If the payment is received before the service becomes taxable and the invoice is issued within fourteen days of the date when service is taxed first time.

3. Further, Section 67A is being amended to obtain rule making powers in respect of the Point of Taxation Rules, 2011, so as to provide that the point in time when service has been provided or agreed to be provided shall be determined by rules made in this regard.

7 - ANNUAL RETURN

Sr. No.	Subject	
7	Annual Return	
	Amended	
Sec.	+ / -	W.e.f.
70	(+)	1 st April 2016

Highlights

7a. The annual return will also have to be filed by Service Tax assessees by 30th November of the succeeding year, above a certain threshold limit, taking total number of returns to three in a year for them. This change shall come into effect from 1st April, 2016.



The assessee filing the Annual Return by the due date may revise the annual return within a period of 1 month from the date of submission of such return. In case of delay, an amount of Rs.100 per day for the period of delay subject to maximum of Rs.20,000/- is liable to be paid.

8 - EXEMPTIONS

Sr. No.	Subject	
8	Exemptions	
	Amended	
Sec.	+ / -	w.e.f.
Noti 25/2012-ST	(+)	Various dates

Highlights

8a. Service Tax exemption to canal, dam or other irrigation works with retrospective effect:

- i. Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature.
- ii. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 1st July, 2012 to 29.01.2014.
- iii. Refund of Service Tax paid on the said services during the period from the 1st July, 2012 to 29.01.2014 shall also be allowed in accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from

the date on which the Finance Bill, 2016 receives the assent of the President.

Highlights

8b. Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption

- i. Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of -

a. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

b. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

c. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act; was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31.03.2020.

- ii. Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which



appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015. The exemption is being restored till 31.03.2020. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

Highlights

8c. New Exemptions

i. The services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India.

ii. Services provided by Securities and Exchange Board of India (SEBI) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are being exempted from service tax.

iii. Services provided by Employees Provident Fund Organization to employees.

iv. Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees

v. Services provided by National Centre for Cold Chain Development by way of knowledge dissemination

vi. Services provided by Insurance Regulatory and Development Authority

vii. Services of general insurance business provided under Niramaya Health Insurance scheme

viii. The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theater, is being increased from Rs 1 lakh to Rs 1.5 lakh per performance.

ix. Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners are being exempted from service tax.

x. Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from service tax.

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

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

xiii. Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority under the Affordable housing in partnership component of PMAY or



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any housing scheme of a State Government are being exempted from service tax.

xiv. Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management(PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management are being exempted from service tax.

Highlights

8d. Exemption in respect of following services is being withdrawn

i. Services provided by a senior advocate to an advocate or partnership firm of advocates and to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession and

ii. A person represented on an arbitral tribunal to an arbitral tribunal (w.e.f. - 1st April 2016)

Comments

i. Therefore service provided by Senior Advocate will now be chargeable to service tax and service receiver in this case is not required to pay service tax under reverse charge mechanism as the service tax will be charged by the Senior Advocate in his invoice.

ii. However, the existing dispensation under Reverse Charge Mechanism regarding legal services provided by a firm of advocates other than senior advocate is being continued.

iii. Exemption on construction, erection, commissioning or installation of original works pertaining to monorail or metro, in respect of contracts entered into on or after 1 March 2016, is being withdrawn with effect from 1 March, 2016. The service will be taxable at abated value of 40%

iv. Exemption on the services of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn w.e.f. 1st April 2016.

v. Exemption on construction, erection, commissioning or installation of original works pertaining to monorail or metro, in respect of contracts entered into on or after 1 March 2016, is being withdrawn with effect from 1 March, 2016.

9 - REVERSE CHARGE MECHANISM

Sr. No.	Subject	
9	Reverse charge mechanism	charge
	Amended	
Sec.	+ / -	w.e.f.
Noti 30 / 2012 - ST	(+)	1 st April 2016

The following additional service will now be covered under Reverse Charge Mechanism-

Highlights

9a. The Service provided by mutual fund agent/ distributor to Mutual fund or Asset Management Company will not be covered under Reverse Charge Mechanism w.e.f. 1st April 2016.

Comments

1. It will enable the small sub agent to avail small scale exemption of threshold turnover of



Rs.10 Lakhs. Thus Mutual Fund Agent / Distributor will now be liable to pay service tax if the value of such service exceeds the limit of small scale exemption of threshold turnover of Rs.10 Lakhs.

Sr. No.	Subject	
10	Abatements	
	Amended	
Sec.	+ / -	w.e.f.
Noti 26/2012 - ST	(+)	1 st April 2016

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Highlights

9b. Service received from Senior Advocate will not be covered under Reverse charge Mechanism. (The issue is discussed in detail in Point 8d(i).) (w.e.f. 1st April 2016)

9c. Any service received from government will now be taxable under service tax regime.

Comments

1. Earlier only support service received from Government was made liable to service tax. Thus service receiver will now be liable to pay service tax under Reverse Charge Mechanism in respect of any service received from Government. (w.e.f. 1st April 2016)

Highlights

9d. Service received from Foreign Shipping line with respect to import of goods/machinery from outside India will now be covered under Reverse Charge Mechanism. (The issue is discussed in detail in Point 2(c))

Highlights

9e. Activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), will be leviable to service tax and will be covered under reverse charge mechanism. (The issue is discussed in detail in Point 13a.)

10 - ABATEMENTS

Highlights

10a. In cases where the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour, abatement of 90% is available with specified conditions. However, this abatement of 90% cannot be claimed in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.

Comments

1. There is no change in the rate of abatement or the conditions required to be fulfilled for claiming the said abatement. The intent behind this amendment is to ensure that no tour operator can claim abatement on service portion in tour operating activity which was defeating the purpose of the abatement provided i.e. Abatement is provided so that service tax can only be charged on Service portion in any activity.

Highlights

10b. Abatement rates in respect of services by a tour operator in relation to a tour other than in para A.) above, is being rationalised from 75% and 60% to 70%. Consequently, the definition of package tour as provided in the relevant notification is being omitted.

Highlights



10c. Services provided by foreman to a chit fund under the Chit Funds Act, 1982 are proposed to be taxed at an abated value of 70% (i.e., with abatement of 30%), subject to the condition that Cenvat credit of inputs, input services and capital goods has not been availed.

Highlights

10d. At present, there is abatement of 60% on the gross value of renting of motor-cab services, provided no cenvat credit has been taken. It is being made clear by way of inserting an explanation in the notification No. 26/2012-ST that cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

Comments

1. The purpose of the abatement provided under this service is to exclude cost of fuel and other cost of materials from the value of service so that only service portion can be charged to service tax. But in some cases, the service providers were not including the cost of fuel in value of consideration. Therefore it has been now clarified that abatement shall only be allowed where cost of fuel is included in the value of consideration charged.

Highlights

10e. At present, two rates of abatement have been prescribed for services of construction of complex, building, civil structure, or a part thereof,- (a) 75% of the amount charged in case of a residential unit having carpet area of less than 2000 square feet and costing less than Rs 1 crore, and (b) 70% of the amount charged in case of other than (a) above, both subject to fulfillment of certain conditions prescribed therein. A uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building,

civil structure, or a part thereof, subject to fulfillment of the existing conditions.

Highlights

10f. At present, service tax is leviable on 30% of the amount charged for the service of transport of passengers by rail, without cenvat credit of inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said services. It is proposed to continue with the same level of abatement with cenvat credit of input services for the said service.

Highlights

10g. At present, service tax is payable on 30% of the value of service of transport of goods by rail without cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service. It is now proposed to continue with the same level of abatement with cenvat credit of input services for transport of goods by rail (other than transport of goods in containers by rail by any person other than Indian Railway). A reduced abatement rate of 60% with credit of input services is being prescribed for transport of goods in containers by rail by any person other than Indian Railway.

Highlights

10h. At present, service tax is leviable on 30% of the value of service of transport of goods by vessel without Cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service. It is now proposed to continue with the same level of abatement with cenvat credit of input services for the said service.

Highlights



10i. Abatement on transport of used household goods by a Goods Transport Agency (GTA) is being rationalised at the rate of 60% without availment of cenvat credit on inputs, input services and capital goods by the service provider (as against abatement of 70% allowed on transport of other goods by GTA).

The proposed rationalization in abatements shall come into effect from the 1st day of April, 2016.

11 - INDIRECT TAX DISPUTE RESOLUTION SCHEME 2016

Highlights

11a. Indirect tax Dispute Resolution Scheme, 2016, wherein a scheme in respect of cases pending before Commissioner (Appeals) as on 1st March 2016. The assessee can file a declaration before 31st December 2016 to Designated Authority for resolution of dispute is being introduced. The Declarant has to pay the duty and taxes, interest and penalty equivalent to 25% of duty within 15 days of the receipt of the acknowledgement from the Designated Authority. The Designated Authority shall pass an Order within 15 days from the receipt of the such proof. In such cases the proceedings against the assessee will be closed and he will also get immunity from prosecution.

The said order of the discharge can not be reopened. However the above scheme shall not apply to pending appeals in respect of the following cases 1) search and seizure cases, 2) prosecution of any offence under the Act, 3) Narcotic drugs or other Prohibited goods, 4) any offence punishable under Indian Penal Code or Narcotic Drugs and Psychotropic Substances Act 1985 or Prevention of Corruption Act, 5) detention order passed under Foreign Exchange and Prevention of Smuggling Act 1974.

12 - CHANGES IN CENVAT CREDIT RULES

Sr. No.	Subject	
12	Cenvat Credit Rules	
	Amended	
Sec.	+ / -	w.e.f.
Various rules	(+)	1 st April 2016

With a view to simplify and rationalize the Cenvat Credit Rules, 2004, a number of amendments are being carried out in them. Following are the important changes -

Highlights

12 a. Wagons of sub heading 8606 92 of the Central excise Tariff and equipment and appliance used in an office located within a factory are being included in the definition of capital goods so as to allow cenvat credit on the same.

Highlights

12 b. CENVAT credit on inputs and capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory

Highlights

12 c. All capital goods having value up to Rs. ten thousand per piece are being included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received.

Highlights

12 d. Service by way of transportation of goods by a vessel from customs station of



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clearance in India to a place outside India is being excluded from the definition of exempted service. This would allow shipping lines to take credit on inputs and input services used in providing the said service.

Highlights

12 e. Manufacturer of final products is being allowed to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his premises.

Highlights

12f. Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty is valid for a financial year. It is being provided that the same would be valid for three financial years.

Highlights

12g. It is being provided that CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. It is also being provided that where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a

consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also being provided that CENVAT credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.

Highlights

12h. Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

- i. sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.
- ii. sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.
- iii. sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final

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products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

iv. The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

v. Sub-rule (3A) is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :-

- No credit of inputs or input services used exclusively in manufacture of exempted goods
- or for provision of exempted services shall be available ;
- Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;

- Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non-exempted goods and exempted and non-exempted services in the previous financial year;

- Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule.

vi. A new sub-rule (3AA) is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen per cent per annum

vii. A new sub-rule (3AB) is being inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

viii. Sub-rule (3B) of rule 6 is being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

Highlights

12i. Following are the other changes being made in rule 6 of the Cenvat Credit Rules:



- i. Explanations 3 and 4 are being inserted in rule 6, sub-rule (1) so as provide for reversal of CENVAT Credit on inputs/input services which have been commonly used in providing taxable output service and an activity which is not a service under the Finance Act, 1994.
- ii. Sub-rule (4) is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service.
- iii. Sub-rule (7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India shall not be required to be reversed by the shipping lines. It may be mentioned here that this service presently qualifies as an exempted service on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of exempted service by amending rule 2(e) of the rules as discussed above. Amendment in sub-rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis a vis the foreign shipping lines. The credit available

may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f 1st June 2016 after enactment of Finance Bill 2016.

Highlights

12j. Rule 7 of the Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributor to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is being defined to mean either a job-worker who is required to pay duty on the value determined under the provisions of rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor or a manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on value determined under the provisions of section 4A of the Central Excise Act, 1944.

Highlights

12k. Presently, rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, inter alia, the following conditions, ,:



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i. credit attributable to a particular unit shall be attributed to that unit only. credit attributable to more than one unit but not all shall be to attributed to those units only and not to all units.

ii. credit attributable to all units shall be attributed to all the units. Credit shall be distributed pro rata on the basis of turnover as is done in the present rules.

Highlights

12l. It is also being provided that an outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned. The credit of service tax paid on input services, available with the Input Service Distributor as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit. Further, provisions of rule 6 of Cenvat Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit distributed by Input Service Distributor and not to the Input Service Distributor.

Highlights

12m. Rule 7B is being inserted in Cenvat Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of

such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply mutatis mutandis, to such a warehouse of the manufacturer.

Highlights

12n. Presently, an invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing CENVAT credit. It is being provided that an invoice issued by a service provider for clearance of inputs or capitals goods shall also be a valid document for availing CENVAT credit.

Highlights

12o. Rule 9A of the Rules is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board.

Highlights

12p. The existing sub- rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub- rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

13 - MISCELLANEOUS AMENDMENTS

Sr. No.	Subject	
13a	Lottery Distributor Service	
	Amended	
Sec.	+ / -	w.e.f.
65B(44)	(+)	Date of assent



Highlights

Explanation 2 in section 65B(44) is proposed to be amended to clarify that activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is leviable to service tax.

Comments

1. Thus it is clarified that any activity in relation to lottery distributor or selling agent undertaken on behalf of state government will be liable to service tax. Consequent to above inclusion in the definition of 'service', the service provided by a selling agent or a marketing agent of lottery tickets in relation to a lottery in any manner to lottery distributor or selling agent of the State Government is covered under Reverse Charge Mechanism.

Sr. No.	Subject	
13b	Period of limitation	
	Amended	
Sec.	+ / -	w.e.f.
73	(+)	Date of assent

Highlights

The limitation period for recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is proposed to be enhanced by one year, that is, from eighteen months to thirty months.

Sr. No.	Subject	
13c	Penalties	
	Amended	
Sec.	+ / -	w.e.f.
78A	(+)	Date of assent

Highlights

Penalty proceedings under section 78A shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under section 76 or section 78

Comments

1. Therefore penalty proceedings against the director of the company can not be initiated where the penalty proceeding under section 76 and section 78 have been closed.

Sr. No.	Subject	
13d	Offences and Penalties	
	Amended	
Sec.	+ / -	W.e.f.
89	(+)	1 st June 2016

Highlights

The monetary limit for filing complaints for punishable offenses is proposed to be enhanced to Rs. 2 crore.

Comments

1. The earlier monetary limit with respect to above was Rs.50 Lacs rupees.

Sr. No.	Subject	
13e	Power to Arrest	
	Amended	
Sec.	+ / -	w.e.f.
91	(+)	Date of assent

Highlights

The power to arrest in service tax law is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer, and amount of such tax collected but not paid is above the threshold of Rs.2 crore.



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Sr. No.	Subject	
13f	Refund	
	Amended	
Sec.	+ / -	w.e.f.
Noti 41/2012-ST	(+)	Retrospective amendment

Highlights

Retrospective amendment to Notification No. 41/2012-ST

Notification No. 41/2012- ST, dated the 29th June, 2012 was amended vide notification No.1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods.

Comments

The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide notification No.1/2016-ST dated 3rd February, 2016.

Sr. No.	Subject	
13g	Amendment in Section 93A	
	Amended	
Sec.	+ / -	w.e.f.
93A	(+)	Date of assent

Highlights

Section 93A of the Finance Act, 1994 is being amended so as to allow rebate by way of notification as well as rules.

Sr. No.	Subject	
13 h	Information technology software	
	Amended	
Sec.	+ / -	w.e.f.
Noti 11/2016-CE	(+)	1 st March 2016

Highlights

With effect from 21.12.2010, media falling under Chapter 85 with recorded Information Technology Software has been notified under section 4A of the Central Excise Act. Accordingly, Central Excise duty/CVD is to be paid on the value of such media with recorded Information Technology Software and the assessable value of such media is required to be determined on the basis of the retail sale price (RSP) affixed on the package of such media under the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder. In respect of transactions involving supply of such media bearing RSP, not amounting to sale/deemed sale, service tax is being exempted. Thus, only Central Excise duty is levied on such transactions.

(Notification No. 11/2016-CE dated 1st March 2016 refers)

In certain situations like delivering customised software on media, such media with recorded Information Technology Software, is not required to bear the RSP when supplied domestically or imported. Difficulties are being experienced in the assessment of such media to Central Excise duty/CVD besides giving rise to the issue of double taxation levy of Central Excise duty/CVD as well as service tax. In order to resolve the issue, media with recorded Information Technology Software which is not required to bear RSP, is being



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exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such Information Technology Software recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore be required to pay Central Excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfillment of certain conditions.

Comments

1. The classification of software as product or service has seen its share of litigation. This results in overlap not only between VAT and service tax but also between Excise Duty and service tax. The Budget tries to address this issue of overlaps between excise duty and service tax. Thus, the levy of Central Excise duty/CVD and service tax will be mutually exclusive.

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