



HIGHLIGHTS OF BUDGET 2017

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INTRODUCTION

Finance Minister, Mr. Arun Jaitley, presented the Union Budget 2017-18 in Lok Sabha on February 1, 2017. This year's Budget was unique in more than one ways. Apart from collapsing the Rail Budget, pushing the date of presentation by a month, removal of plan and non plan classification of expenditure to facilitate holistic view of allocations for sectors, the Budget also has more that is unsaid than explicit, atleast for education and skill development. The backdrop to the Budget was a fairly volatile past few months with multiple issues such as (a) demonetization; (b) ambiguities on indirect transfer taxes; (c) treaty changes to India-Mauritius Treaty ("Mauritius Treaty"), India-Singapore Treaty ("Singapore Treaty") and India-Cyprus Treaty ("Cyprus Treaty"); (d) application of General Anti Avoidance Rules ("GAAR") from April 1, 2017 along with other macro global changes, all of which were on top of investors' minds. Given the context, the Finance Minister has managed to maintain a fair balance between addressing concerns raised by foreign investors along with introducing further rationalization and anti-abuse provisions as part of the Budget. The Budget has made significant progress in terms of resolving and ironing some lingering concerns that have been raised by people. It is hard to find a major negative or a large missed opportunity in the proposals, and most of Budget 2017 seeks to do just what it promises—TEC India "Transform, Energise and Clean India."

GLOBAL ECONOMY

1. Global growth has been estimated to slow down to 3.1% in 2016 before rising to 3.4% in 2017 according to the International Monetary Fund (IMF). The forces shaping the global outlook include new shocks, such as BREXIT; ongoing

realignments in China, low oil prices, overall weakness in economies of Japan, US and Europe, and as well as geopolitical uncertainties. Meanwhile, these setbacks were offset by stronger than expected economic activity during the second half of 2016 in the advanced economies.

2. On the other hand, Emerging Market and Developing Economies (EMDEs) are projected to grow by 4.5% in 2017. Given the still weak and precarious nature of the global recovery, and the threats it faces, the IMF has highlighted the urgent need for a comprehensive, consistent and coordinated policy approach to stimulate growth and ensure it is distributed more evenly to avoid future issues.

INDIAN ECONOMY

3. Indian growth over the past one year can be looked at as a story of two halves. During the first half it was clearly the fastest growing large economy in the world with 7.2% in H1FY17. The second half was expected to see a pickup in growth levels aided by increased consumption levels. However, the government's decision to demonetize high value notes has potentially caused some slowdown in the near term. The slowdown can essentially be traced to attenuation of demand in the economy as there was insufficient cash in the economy to carry out necessary transactions.

4. The Indian statistical machinery, Central Statistics Office (CSO), came out with a growth estimate of 7.1% as it released its advanced estimates. Important to note that these estimates did not capture the effects of demonetization and were essentially created on data till October end. However in the Economic Survey, it has been estimated that the growth rate in FY16 could be in the region of 6%-6.75%. Moody's Investors Service and its Indian affiliate ICRA Ltd said the country's growth of gross value added (GVA) at basic prices will ease to about 6.6% in 2017 from around 7% in 2016, with a likely pick-up in the second half of the calendar year, as the economy adjusts after

demonetization. However, India will remain one of the fastest growing major economies globally in 2017.

INFLATION

The retail inflation stayed above the comfort zone of 5% till August 2016, but it started declining in Q2 August onwards led by fall in food prices and fuel index. Food prices declined on the back of increase in agricultural output due to normal monsoons and possibly on account of demonetization. It fell to a two-year low of 3.4% in December. The average for the year-to-date (April-December 2016) stood at 4.85%, a tad higher than 4.8% during the same period of the previous year.

BUDGET PROPOSALS

- CPI has been trending downwards following the demonetization announcement, which has had the largest effect on food prices.
- Market reforms will be undertaken and the States would be urged to de-notify perishables from APMC. This will give opportunity to farmers to sell their produce and get better prices.
- Area under crop insurance (Fasal Bima Yojana) to be increased to 40% of cropped area in FY18 from 30% in FY17

FISCAL BALANCING

1. The Budget 2016–17 had projected the fiscal deficit to inch down from 3.9% in 2015–16 to 3.5% in the following year. This was aimed to be achieved despite the committed expenditure as a payout for the implementation of the Seventh Pay Commission. The government did perform impressively as the receipts surpassed the budget expectations.

2. The non-debt receipts during April–November 2016 grew by 25.8% as against the budgeted growth of 16.4% for the full year. Gross tax revenue also

exceeded expected growth as it grew by 21.5% during April–November, while the budget had expected growth of 11.9%. This was achieved particularly through excise duty and service tax collection.

3. The revenue collection also achieved a strong boost from the government's Income Disclosure Scheme, which mopped up over ₹65 thousand crore in a matter.

4. The Fiscal Responsibility and Budget Management (FRBM) committee has recommended 60% as a combined debt to GDP with the central government accounting for 40% and state governments accounting for 20%.

5. The Union Minister of Finance and Corporate Affairs while presenting the General Budget 2017–18, said that considering the fiscal deficit roadmap for the next three years and the need for higher public expenditure in the context of sluggish private sector investment and slow global growth, the fiscal deficit for 2017–18 has been pegged at 3.2% of the GDP, and he further committed to achieve 3% in the following year, that is, in 2018–19.

6. The gradual decline in fiscal deficit assures prudent fiscal consolidation without sacrificing public expenditure, while private sector investment is expected to be sluggish. The focus now will be on revenue and capital expenditure as the new budget does away with the plan and non-plan expenditure.

7. The past quarters have seen some weakness in India's foreign trade, with exports registering negative growth for the past seven quarters. This weakness in the overall trade activity reflects the subdued state of global and domestic demand which has been besieged by low commodity prices. In comparison, FY17 has shown a marked improvement with India's exports registering positive growth towards the end of the year, as compared to the overall contraction of 15.9% in FY16. Exports growth has remained in the positive region since September 2016. It seems that the revival of India's exports can be accredited to improved confidence in the Indian economy amidst the fragile world economy, as well as the numerous government initiatives and reforms which have helped boost the domestic economy and its perception amongst international circles. Further, the growth of imports has been in the negative

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territory for the majority of the current fiscal, with Q1 and Q2 of FY17 registering growth rates of -14.5% and -12.2% respectively. Imports moved back into positive region in October 2016 and have maintained positive growth ever since. A closer look at the figures shows that the value of non-oil ex-gold imports fell by 7.5% in Q1 and 5% in Q2, however have entered back into the positive growth region since October 2016. While the value of oil imports has remained more or less steady in FY17, with year-on year growth moving upwards towards the end of the fiscal, the value of gold imports has been volatile with most months depicting a visible increase.

8. Amid the somewhat improving domestic fundamentals, the INR has remained relatively stable, trading between the 66 and the 69 mark throughout FY17 against the USD. Some global economic shocks this year such as Brexit did lead to some unwanted volatility. The INR saw some weakness towards the end of November 2016, following the US presidential election and a pricing in of a Fed rate hike in mid-December. The INR has appreciated against some other major currencies such as the Pound and the Renminbi, as well as the Lira, since the beginning of the year. Further, the real effect exchange rate has shown an upwards trend through FY17, indicating that the INR is somewhat overvalued. Going forward, we expect the INR to continue to trade around current levels in the short run, primarily responding to changing sentiments in global markets.

9. Given the outlook on commodity prices and global growth, we are likely to witness growth in both exports and imports. However, we can expect imports to grow faster than exports as energy prices recover. More importantly, healthy growth in the US could mean a stronger USD. As such, expect the INR to move towards the 70 mark over the next year

BUDGET PROPOSALS

- Budget proposed enactment of the Aadhar bill for disbursement of financial subsidies and benefits
- A new and restructured Central scheme with a focus on export infrastructure, namely, Trade Infrastructure for Export Scheme (TIES) will be launched in 2017-18

- Concessional withholding rate of 5% charged on interest earned by foreign entities in external commercial borrowings or in bonds and Government securities is extended to 30.6.2020. This benefit is also extended to Rupee Denominated (Masala) Bonds
- Plans for job creation in textiles and leather & footwear

DIGITAL INDIA



Digital India is an initiative launched by Prime Minister Narendra Modi on 01 July 2015 with a view to empower the people of India digitally, and bridge the gap between rural and digital India. It seeks to transform the country into a connected economy, attract investment in electronics manufacturing, and create millions of jobs and support trade. The wider goal of Digital India is to bring broadband connectivity in all panchayats, wifi in all schools and universities, and public wifi hotspots in all major cities in India by 2019. The program will also contribute in the delivery of digital services in the health, education, agriculture, and banking industries. An array of milestones have been achieved since the launch of the Digital India program, and significant progress has been made in taking forward the vision of a digitally empowered

India. A number of digital schemes, products, and services have been introduced to promote e-governance.

BUDGET PROPOSALS

- 12.5 million people have adopted the BHIM app so far.
- The Government will launch two new schemes to promote the usage of BHIM.
- Target of 25 billion digital transactions for FY18 through UPI, USSD, Aadhar Pay, IMPS and debit cards.
- Proposal to mandate all Government receipts through digital means, beyond a prescribed limit.
- Additional 1 million new POS terminals by March 2017, and encouraged to introduce 2 million Aadhar based POS by September 2017.
- Introduction of Payments Regulatory Board in the RBI
- No transaction above INR 300,000 permitted in cash subject to certain exceptions.
- Numerous digital payments machinery and their components for manufacture to be exempt from BCD, Excise/CV duty and SAD

SKILL INDIA

Launched along with the Make in India flagship scheme on 15 July 2015, Skill India seeks to transform India into a prospering industrial economy, with an able and skilled workforce is of paramount importance. With a primary focus on the 2.4 million youth who lack formal certification and the means to get it, Skill India aims to train over 400 million people in India in various skills by 2022, which will boost the employability of the population. Since the program's initiation, the government has initiated several programs under Skill India such as setting up a student Financial Aid Authority to monitor scholarships and Educational Loan Schemes, and setting up various institutes including a new

IIT, AIIMS, and Horticulture, Pharmaceuticals, and Science and Education Research institutes across different states in India to name a few.

Below is a table summarizing the key policy initiatives and recent developments with regards to Skill India.

BUDGET PROPOSALS

- Innovation Fund for Secondary Education proposed to encourage local innovation for ensuring universal access, gender parity and quality improvement to be introduced in 3479 educationally backward districts.
- National Testing Agency to be set-up as an autonomous and self-sustained premier testing organization.
- Skill Acquisition and Knowledge Awareness for Livelihood Promotion programme (SANKALP) to be launched at a cost of INR 40 billion. SANKALP will provide market relevant training to 35 million youth.
- Next phase of Skill Strengthening for Industrial Value Enhancement (STRIVE) to be launched in FY18 at a cost of INR 22 billion.
- Next phase of Skill Strengthening for Indust Pradhan Mantri Kaushal Kendras to be extended to more than 600 districts across the country. 100 India International Skills Centres will be established across the country real Value Enhancement (STRIVE) to be launched in FY18 at a cost of INR 22 billion
- To introduce a system of measuring annual learning outcomes of the schools.
- SWAYAM platform, leveraging IT, to be launched with at least 350 online courses.

FINANCIAL SECTOR

1. Listing and trading of Security Receipts issued by a securitization company or a reconstruction company will be permitted on stock exchanges registered under the Security Exchange Board of India (SEBI). This will enhance capital flows into the securitization industry and effectively deal with bank non-performing assets.
2. The Payment and Settlement Systems Act, 2007, will be amended for structural reforms in the payments ecosystem. This is in line with suggestions made by the Committee on Digital Payments constituted by the Department of Economic Affairs. The Payments Regulatory Board is to be set up for replacing the existing board.
3. To bring stability, resilience and a holistic framework, a bill on the resolution of financial firms is to be introduced in the Parliament for setting up of a Securities Appellate Tribunal encompassing several financial regulators such as SEBI, Reserve Bank of India (RBI), Pension Fund Regulatory and Development Authority and Insurance Regulatory and Development Authority.
4. Systematically important non-banking finance companies (NBFCs) above a certain net worth will be categorized as qualified institutional buyers by SEBI. This will help the initial public offering market become stronger and channelize more investments.
5. Online registration of financial market intermediaries such as mutual funds, brokers and portfolio managers, etc., will be implemented.
6. Common applications for registration and opening of bank and demat accounts and the issue of a Permanent Account Number for foreign portfolio investors will be implemented.
7. The Multi State Cooperative Societies Act, 2002, will be revised to protect the investors from dubious/ ponzi schemes.

INFRASTRUCTURE

1. The affordable housing segment will be accorded infrastructure status.
2. To upgrade the infrastructure facilities at airports, the Airport Authority of India Act to be amended to facilitate monetization of land assets.
3. The Metro Rail Policy will be introduced with a focus on innovative models of implementation and financing and standardization and indigenization of hardware and software.
4. A new Metro Act will be introduced for private participation and investment in construction and operation.
5. The Arbitration and Conciliation Act, 1996, will be amended to streamline institutional arrangements for resolution of disputes in infrastructure-related construction contracts, public-private partnerships and public-utility contracts.

FOOD FARMING AND CONSUMERS



1. A Model Act on contract farming law will be introduced for adoption by States with the view to ensure better price realization for farmers.
2. State governments will consider amendments in the Agriculture Produce Market Committee Act to remove perishable items.
3. The Drugs and Cosmetics Rules will be amended to ensure the availability of drugs at reasonable prices and to promote the use of generic medicines.
4. A new regulatory framework for medical devices will be introduced in harmony with international standards to attract investments and enhance the affordability of devices.
5. To provide employment opportunities for women and with focus on the ease of doing business and adoption of modern business practices, the Model Shops and Establishment Bill, 2016, has been shared with the States for their consideration and adoption.

GENERAL

1. The Foreign Investment Promotion Board is proposed to be phased out in 2017–18. Further liberalization of FDI policy is under consideration. *This will result in ease in doing business in India.*
2. The Negotiable Instruments Act will be amended to enforce the realization of payments in case of dishonor of cheque.
3. There will be amendment of laws/ introduction of new laws enabling confiscation of assets in India in the case of economic offenders who have fled the country.
4. The National Testing Agency will be set up as an autonomous organization to conduct all entrance examinations for higher education institutions. The Central Board of Secondary Education, All India Council for Technical Education and other premier institutions will focus on academics.
5. Labour laws to be rationalized into four codes, that is relating to wages, industrial relations, social security and welfare, and safety and working conditions from an ease-of-doing business perspective.

6. Commodities Exchange: Expert committee will be constituted to study and promote creation of an operational and legal framework to integrate spot market and derivatives market in the agricultural sector, for commodities trading. e- NAM to be an integral part of the framework. Commodities and securities derivative markets will be further integrated by integrating the participants, brokers, and operational frameworks. Proposed integration is likely to benefit the farm community, consumers and other stakeholders.
7. Securities exchange: Process of registration of financial market intermediaries like mutual funds, brokers, portfolio managers, etc. will be made online by SEBI. Systemically important NBFCs regulated by RBI and above a certain net worth, to be categorised as Qualified Institutional Buyers (QIBs). This will strengthen the IPO market and channelize more investments. SEBI, RBI and CDDT will jointly put in place necessary common systems and procedures for registration, opening of bank and demat accounts and issue of PAN for Foreign Portfolio Investors (FPIs). Individual demat accounts to be linked with Aadhaar
8. Security Receipts (SR) issued by a securitization company or a reconstruction company under the SARFAESI Act will be permitted for listing and trading on stock exchanges. This will provide an exit opportunity to investors in SRs and enhance capital flows
9. Bill to curtail menace of illicit deposit schemes, Ponzi schemes etc. will be introduced. A bill relating to resolution of financial firms will be introduced. This will contribute to stability and resilience of our financial system
10. A mechanism to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts will be introduced as an amendment to the Arbitration and Conciliation Act 1996. Quick resolution of disputes to boost infra funding and encourage PPP arrangements in infra sector.
11. To safeguard integrity, stability of the Financial Sector and enhance cyber security, the Computer Emergency Response Team (CERT-Fin) will be established. CERT – Fin will coordinate its activities with financial sector

regulators and other stakeholders. This is to enhance confidence of stakeholders in the government's push for Digital India.

12. **Permissible investments by a Trust regulated by the Indian Trust Act 1882:** Trustees permitted to invest the unutilised money as per the provisions of the Trust Deed or in any securities notified by the Central Government in the Official Gazette. It will Likely broaden the investment avenue for private trusts.

13. **Election Funding:** Schedule Commercial Banks permitted to issue "Electoral Bonds" under a Scheme to be notified by the Central Government. Such Bonds can be donated to Political Parties. The Political Parties receiving such Bonds as contributions are not required to report the receipts of such Bonds to the Election Commission. Such contributions received by the Political Parties will be eligible for entitlement of tax reliefs under the Income Tax Act 1961. It is a measure to boost transparency and accountability in funding of political parties and preventing generation of unaccounted money.



14. **Oil Industry Development Fund:** Funds in the Oil Industry Development Fund set up under the Oil Industry (Development) Act 1974 can now be also used for meeting expenditure: a) To be incurred by the Central Public Sector Undertaking in the Oil and Gas sector on behalf of the Central Government;

and b) On any scheme or activity by the Central Government relating to Oil and Gas sector. Funding of Oil and Gas PSUs will support various government initiatives in Oil and Gas Sector.

15. **Payment Regulatory Board:** Payments Regulatory Board is to be constituted replacing the existing Board for Regulation and Supervision of Payment and Settlement Systems. The proposed Board to have equal representatives from within RBI and the Government of India. The powers and functions of the Payment Regulatory Board to be prescribed. It is a measure to ensure transparency in regulating the Payment and Settlement Systems.



PERSONAL TAX

CORPORATE TAX

NON RESIDENT TAXATION

TRANSFER PRICING

CAPITAL GAINS

ANTI ABUSE PROVISIONS

WITHOLDING TAX REQUIREMENTS

OTHER PROVISIONS

PERSONAL TAX

A. TAX RATES

1. There is no change in the basic exemption limit for individuals/HUFs. It is proposed to reduce the existing rate of taxation for income between INR 250,000 and INR 500,000 to 5%. It is also proposed to introduce surcharge at 10% for individuals having taxable income above INR 5,000,000 but not exceeding INR 10,000,000. Following table shows maximum net benefit for different tax brackets.

Particulars	2.50 L	3.00 L	3.50 L	5.00 L	>5.00L
Resident	Nil	Nil	2,500	7,500	12,500
Sr. Citizen	Nil	Nil	Nil	5,500	10,000
Super Sr. Citizen	Nil	Nil	Nil	Nil	Nil

2. Rebate of tax payable or INR 2,500 whichever is less, for individuals whose total income does not exceed INR 3.50 L.

3. Simple one-page form to be filed as Income Tax Return for the category of individuals having taxable income up to 5 lakhs other than business income.

4. Surcharge of 10% of tax payable on categories of individuals and others whose annual taxable income is between 50 lakhs and 1 crore and 15% on annual income exceeding Rs.1 crore. Hence the Maximum marginal tax rate (MMR) for individuals having income up to INR 1 crore will change to 33.99% (from 30.9%). There is no change in the MMR of 35.54% for income above INR 1 crore (wherein a surcharge of 15% applies).

B. TAX REBATE

The rebate for the low income earners (under section 87A) is proposed to be reduced to INR 2,500 from the present limit of INR 5,000 and will be available only in case of income up to INR 3.5 lakhs (earlier, INR 5 lakhs)

C. EXEMPTION ON WITHDRAWAL FROM NATIONAL PENSION SCHEME (NPS) [SECTION 10(12A)]

In case of partial withdrawal from the NPS, it has been proposed to exempt withdrawal up to 25% of the contribution made by the individual.

D. DEDUCTION FOR NPS CONTRIBUTION [SECTION 80CCD]

It is proposed to increase the deduction up to 20% of the gross total income (earlier 10%) for a non-employee contributing to NPS. This has been proposed to bring parity in the deduction available to employees (10% of employer and 10% of employee contribution) shall be subject to the overall ceiling limits.

E. PHASE OUT OF DEDUCTION UNDER RAJIV GANDHI EQUITY SAVINGS SCHEME [SECTION 80CCG]

Resident individuals who have invested in listed equity shares or units in equity oriented funds can claim deduction of 50% of amount invested to the extent such deduction does not exceed INR 25,000 for three consecutive years (subject to certain conditions). It is proposed not to allow any fresh deduction under the scheme effective assessment year 2018-19. Nevertheless, those who have invested and claimed deduction earlier can continue to claim the deduction for the balance period.

F. RESTRICTION OF SET OFF OF LOSSES FROM HOUSE PROPERTY

Under the existing provisions, loss from house property is allowed to be set off against any other income (without any limit). It is now proposed to limit such set off to INR 200,000. Any unabsorbed loss from house property can be carried forward to set off against income from house property up to eight years.

G. RESTRICTION ON CASD DONATIONS

The maximum limit of cash donations deductible under section 80G has been proposed to be reduced to INR 2,000 from INR 10,000

H. WITHHOLDING ON RENT

It is proposed that individuals paying rent of INR 50,000 or more for a month/ part of the month during the previous year should withhold income tax at the rate of 5% in the last month of the previous year or last month of tenancy.

CORPORATE TAX

A. TAX RATES

1. Foreign Company tax rates remain unchanged at 40% (plus applicable surcharge and education cess).
2. Basic Tax Rate of Domestic Company are proposed as under:

Particulars	Proposed Tax Rates
For companies whose total turnover or gross receipts in the previous year 2015-16 does not exceed INR 50 crore	25%
For other companies	30%

3. Surcharge for Foreign Company and Domestic Company are as follows:

Particulars	Domestic Company	Foreign Company
Income exceeding INR 1 crore but not exceeding INR 10 crore	7%	2%
Income exceeding INR 10 crore	12%	5%

4. Basic Tax Rate of Firms remains unchanged at 30% (plus applicable surcharge and education cess). Surcharge for firms remains unchanged at 12% on total income exceeding INR 1 crore.
5. Education cess and Higher secondary Education cess remains unchanged at 12% at 2% and 1% respectively in all cases.
6. Rate of DDT remains unchanged at 15% (plus applicable surcharge). Non - corporate resident taxpayers earning dividend more than INR 1 million to pay tax @10% (plus applicable surcharge) in addition to DDT paid by the Company.

B. MAT PROVISIONS PROPOSED TO BE MODIFIED IN LINE WITH IND AS [SECTION 115JB]

1. Pursuant to applicability of Indian Accounting Standards [Ind AS] to specified companies from financial year 2016-17, the Minimum Alternate Tax [MAT] provisions are proposed to be amended retrospectively from assessment year 2017-18.
2. The broad framework for aligning Ind AS compliant financial statements with MAT which is computed on book profits is as under:
 - a) Net Profit before other comprehensive income [OCI] to be considered as the broad starting point of MAT
 - b) No further adjustments to the net profits before other comprehensive income (OCI) of Ind AS compliant companies, other than those already specified under section 115JB.
 - c) Prescribed adjustments to be made in relation to Demergers.
 - c) The OCI includes certain items that will permanently be recorded in reserves and hence never be reclassified to the statement of profit and loss included in the computation of book profits. These items shall be included in book profits for MAT purposes at the point of time as specified below:

Items	Point of time (annual)
Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realisation/ disposal/ retirement or otherwise transferred
Gains and losses from investments in equity instruments designated at fair value through OCI (Ind AS 109)	To be included in book profits at the time of realisation/ disposal/ retirement or otherwise transferred
Re-measurements of defined benefit plans (Ind AS 19)	To be included in book profits every year as the re-measurements gains and losses arise
Any other item	To be included in book profits every year as the gains and losses arise

3. Those adjustments recorded in OCI and which would subsequently be reclassified to the profit and loss, shall be included in book profits in the year in which these are reclassified to the profit and loss.

4. Those adjustments recorded in OCI and which would never be subsequently reclassified to the profit and loss shall be included in book profits as specified hereunder:

Items	Point of time (transition)
Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realisation/ disposal/ retirement or otherwise transferred

Gains and losses from investments in equity instruments designated at fair value through OCI (Ind AS 109)	To be included in book profits at the time of realisation/ disposal/ retirement or otherwise transferred
Re-measurements of defined benefit plans (Ind AS 19)	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS
Any other item	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS

5. Transitional adjustments recorded in Reserves and Surplus, excluding Capital Reserve and Securities Premium Reserve, (i.e. never be reclassified to statement of profit and loss) to be included in book profits for MAT as under:

Items	Point of time (annual)
Assets at fair value as deemed cost	Revaluation impact and all corresponding adjustments to be ignored – appropriate adjustments to be made in year of retirement/ disposal/realisation/transfer
Investments in subsidiaries, JVs and associates at fair value as deemed cost	Realisation of investment
Cumulative translation differences	Disposal of foreign operations
Any other item	Equally over a period of five years starting from the year of first time adoption of Ind AS

It has been clarified in the Memorandum to the Finance Bill, 2017 that deferred tax adjustments recorded in Reserves and Surplus on account of transition to be ignored.

C. COMPUTATION OF TAX DEDUCTION FOR SEZ UNITS

Under the existing provisions of section 10AA, deduction is allowed, in respect of profits and gains of an SEZ unit, subject to fulfilment of certain conditions. In the context of section 10A (which contains similar provisions), Courts have taken a view that the deduction is to be allowed from the total income of the undertaking and not from the total income of the assessee. It is proposed that, the amount of deduction under section 10AA be allowed from the total income of the assessee computed in accordance with the provisions of the Act, before giving effect to the provisions of section 10AA, and the deduction under section 10AA shall not exceed the said total income.

D. NO NOTIONAL INCOME FOR HOUSE PROPOERTY HELD AS STOCK IN TRADE [SECTION 23]

In case of real estate developers, it is proposed that annual value of the house property (being building or land appurtenant thereto) or part of such property, held as stock-in-trade, shall be taken to be nil in case such property or part thereof is not let during the whole or any part of the previous year. This benefit is proposed to be available for a period up to one year from the end of the financial year in which the construction completion certificate for such property is obtained from the competent authority.

E. DISALLOWANCE IN RELATION TO CAPITAL EXPENDITURE INCURRED IN CASH [SECTION 43(1) AND SECTION 35AD]

Currently, unlike provisions for disallowance of revenue expenditure incurred in cash, there is no specific provision for disallowance in relation to capital

expenditure incurred in cash. In order to discourage cash transactions for capital expenditure, it is proposed that any payment for acquisition of an asset, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeding INR 10,000 to a person in a day, shall not be considered as part of the actual cost of the asset and consequently no depreciation will be available in relation to such asset. Moreover, such capital expenditure will also not be considered for any investment linked deduction, available for specified businesses, under section 35AD.

F. ACTUAL COST OF ASSET IN CASE OF WITHDRAWAL OF INVESTMENT LINKED DEDUCTION [SECTION 43(1), EXPLANATION 13]

Currently, if any asset on which investment linked deduction under section 35AD is claimed and allowed, is used for a purpose other than specified business, then the benefit of deduction already granted under section 35AD is deemed to be the income of the assessee, net of normal depreciation as would be available on such asset. However, there is no clarity on determination of actual cost for the purposes of allowance of depreciation on such asset going forward. It is therefore proposed that in case of such an asset, the actual cost shall be the actual cost to the assessee, as reduced by the depreciation calculated at appropriate rates, since the date of its acquisition.

G. INCREASE IN DEDUCTION LIMIT IN RESPECT OF PROVISION FOR BAD AND DOUBTFUL DEBTS [SECTION 36(1)(VIA)]

As per the existing provisions, specified Indian banks can claim deduction in respect of provision for bad and doubtful debts to the extent of 7.5% of the total income (computed before making any deduction of such amount and deductions under Chapter VIA) and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner at the end of the previous year, subject to other

prescribed conditions. It is now proposed to enhance deduction of 7.5% to 8.5%. There is no change proposed in the other conditions.

H. DISALLOWANCE IN RELATION TO REVENUE EXPENDITURE [SECTION 40A(3)]

Under the existing provision of section 40A(3), any expenditure, in respect of which payment is made, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, to a person in a day in excess of INR 20,000, is not allowed as deduction. It is proposed to reduce the threshold of payment, made otherwise than by an account payee cheque drawn on a bank or account payee bank draft, to a person in a day to INR 10,000 for the purpose of disallowance of expenditure. It is further proposed to include use of electronic clearing system through a bank account as a permitted mode of payment. Similarly, the threshold in section 40A(3A) is also reduced from INR 20,000 to INR 10,000.

I. EXTENSION OF SCOPE OF SECTIONS 43B AND 43D TO CO-OPERATIVE BANKS

Under the existing provisions of section 43D, interest income in relation to certain categories of bad or doubtful debts received by specified institutions or banks or corporations or companies, is chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier. It is proposed to extend the above benefit to co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development banks. Moreover, it is also proposed to amend section 43B to include interest payment on any loan or advances from a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. Such interest will now be tax deductible to the borrower on payment basis.

I. RATIONALISATION OF PROVISIONS TO PROMOTE AFFORDABLE HOUSING [SECTION 80-IBA]

The existing provisions of section 80-IBA provide for 100% deduction in respect of profits and gains derived from developing and building certain housing projects, subject to specified conditions. To promote the development of affordable housing, it is proposed to relax certain specified conditions as under:

Existing Conditions	Proposed Conditions
Size of residential unit or shop or commercial establishment is measured by taking into account the “built-up-area”	Size of residential unit or shop or commercial establishment is proposed to be measured by taking into account the “carpet area” as defined in the Real Estate (Regulation and Development) Act, 2016
For the projects located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the distance of 25 kms (measured aerially) from the municipal limits of these cities, following conditions are prescribed: <ul style="list-style-type: none"> • Minimum size of plot of land to be 1000 square metres; • Maximum size of residential unit to be 30 square metres; and • At least 90% utilization of permissible floor area ratio. 	The said conditions are proposed to be restricted to the projects located within the cities of Chennai, Delhi, Kolkata or Mumbai only. The benefit of 60 square metres, being the maximum size of residential unit, will now be available to the projects located within the distance of 25 kms (measured aerially) from the municipal limits of these cities.
Time period for completion of the project is three years	Time period for completion of the project is proposed to be extended to five years

K. TAXATION OF DIVIDEND INCOME [SECTION 115BBDA]

Under the existing provisions of section 115BBDA, income by way of dividend in excess of INR 1 million is chargeable to tax at the rate of 10% on gross basis in case of a resident individual, HUF or firm. It is proposed to extend the scope of this provision to all resident assessee, except domestic companies and specified funds, trusts, institutions.

L. INCOME FROM TRANSFER OF CARBON CREDITS [SECTION 115BBG]

Currently, there are no specific provisions in relation to taxability of income received or receivable on transfer of carbon credits. It is proposed to insert a new provision to provide that any income from transfer of carbon credit, will be taxable at a concessional rate of 10% (plus applicable surcharge and cess). No expenditure or allowance in respect of such income shall be allowed under the Act.

M. CARRY FORWARD OF MAT CREDIT AND AMT CREDIT [SECTION 115JAA AND SECTION 115JD]

Currently, the tax credit for Minimum Alternate Tax ('MAT') and Alternate Minimum Tax ('AMT') can be carried forward and set off for a period of ten assessment years. It is proposed that the tax credit for MAT and AMT can be carried forward for a period of fifteen assessment years. It is further proposed to amend sections 115JAA and 115JD so as to provide that the amount of tax credit in respect of MAT/ AMT shall not be allowed to be carried forward to subsequent year to the extent such credit relates to the difference between the amount of foreign tax credit allowed against MAT/ AMT and foreign tax credit allowable against the tax computed under regular provisions of Act.

N. CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF ELIGIBLE START-UP [SECTION 79]

Currently, change in shareholding of more than 49% results in denial of benefit of carry forward and set off of losses. It is proposed to exclude a company which is an eligible start-up carrying on eligible business and which is not a company in which the public are substantially interested from section 79, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred: – continue to hold those share on the last day of such previous year; and – such loss has been incurred during the period of seven years beginning for the year in which such company is incorporated.

O. EXTENSION OF CLAIM PERIOD FOR START-UPS [SECTION 80IAC]

Currently, it is provided that an eligible start-up shall be allowed a deduction of an amount equal to one hundred per cent of the profits and gains derived from eligible business for three consecutive assessment years out of five years beginning from the year in which such eligible startup is incorporated. It is proposed to provide that deduction can be claimed by an eligible start-up for any three consecutive assessment years out of seven years beginning from the year in which such eligible start-up is incorporated.

NON RESIDENT TAXATION

A. CLARITY ON APPLICABILITY OF INDIRECT TRANSFER PROVISIONS [SECTION 9]

The indirect transfer provisions are proposed to be amended to clarify that they shall not apply to any asset or capital asset being investment held by non-resident, directly or indirectly, in a Foreign Institutional Investor registered as Category-I or Category II under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992. The proposed amendment is clarificatory

in nature and is applicable retrospectively with effect from assessment year 2012-13.

B. RELAXATION TO ELIGIBLE INVESTMENT FUND [SECTION 9A]

1. Currently, one of the prescribed conditions for availing benefit of section 9A is that monthly average of the corpus of the fund shall not be less than INR 1000 million except where the fund has been established or incorporated in the previous year.

2. It is proposed to provide that in the previous year in which the fund is being wound up, the condition that the monthly average of the corpus of the fund shall not be less INR 1000 million shall not apply.

The proposed amendment is applicable retrospectively with effect from assessment year 2016-17.

C. CONCESSIONAL TAX RATE ON INTEREST IN CERTAIN CASES [SECTION 194LC AND SECTION 194LD]

1. ECB

Currently, beneficial TDS rate of 5% is available on interest payable by an Indian company or a business trust to a non-resident in respect of the following borrowings in foreign currency from sources outside India: (a) on or after 1 July 2012 but before 1 July 2017 under a loan agreement; or (b) by way of issue of any long-term bond including long-term infrastructure bond on or after 1 October 2014 but before 1 July 2017. It is proposed to extend the concessional TDS rate for aforesaid borrowings made before 1 July 2020.

2. Certain bonds and Government securities

Beneficial TDS rate of 5% on interest payable to FIIs and QFIs in respect of investments in rupee denominated bonds of an Indian company or Government securities is also proposed to be extended to interest payable before 1 July 2020.

D. CLARIFICATION ON INTERPRETATION OF 'TERM' USED IN AGREEMENT [SECTION 90, SECTION 90A]

It is proposed to clarify that where any 'term' used in any agreement entered into with foreign countries or specified association in the specified territories for double taxation relief, is defined under the agreement, such term shall be assigned the meaning as provided in the said agreement. It is further clarified that where such term is not defined in the said agreement, but defined in the Act, then it shall be assigned the meaning as defined in the Act and any explanation issued by the Central Government.

TRANSFER PRICING

A. INTRODUCTION OF SECONDARY ADJUSTMENTS

Secondary adjustments seek to give an economic effect to the primary transfer pricing adjustment as if the underlying transaction had actually taken place at arm's length. Many jurisdictions, including the US, Germany, France and Netherlands, provide for secondary adjustments, and the same may take the form of a deemed dividend, equity contribution or loan.

The provisions define a secondary adjustment as an adjustment in the books of accounts of the taxpayer and the associated enterprise. Further, there is a requirement to repatriate the excess money available with the associated enterprise to India. If such excess money is not repatriated within the prescribed time limit, the same will be considered as an advance made by the

taxpayer to the associated enterprise, and interest will be computed on the same. The manner of computation of interest, that is the rates, duration, etc., will be prescribed in due course.

Secondary adjustments will be required in case of the following primary adjustments:

- Suo-moto adjustment offered by the taxpayer
- Adjustment made by the Assessing Officer and accepted by the taxpayer
- Adjustment determined by an Advance Pricing Agreement (APA)
- Adjustment made as per safe harbor rules
- Adjustment arising as a result of a Mutual Agreement Procedures (MAP) resolution.

The provisions indicate that secondary adjustments would not apply for the Financial Year 2015–16 or prior years, but only if the primary adjustment does not exceed ₹10 million. In all other cases, it would appear to apply.

Further clarity is required in terms of how the provisions will be applied to periods prior to 1 April, 2017 (the date the provisions would come into force), how an adjustment could be made in the books of accounts of the associated enterprise, possibility of securing double taxation relief when the associated enterprise does not agree to the adjustment, etc.

B. RESTRICTIONS ON INTEREST DEDUCTIONS

The Base Erosion and Profit Shifting (BEPS) Action Plan 4 of the Organization for Economic Co-operation and Development recommended alternate approaches for countries to limit tax base erosion through interest deductions and other financial payments. As India's response to the above action plan, Budget 2017 proposes to limit tax deduction of specified interest expenses.

The provisions will apply to taxpayers that are Indian companies or permanent establishments of foreign companies in India. Taxpayers engaged in banking or insurance business have been excluded.

The provisions will apply to interest or similar expenses paid (including those paid on existing debt) to (a) overseas associated enterprises or (b) third-party

lenders for whom the underlying debt is backed by an implicit or explicit guarantee or equivalent deposit from overseas associated enterprises.

Any interest paid for the year under consideration in excess of 30% of the earnings before interest, taxes, depreciation and amortization of the taxpayer will be treated as excess interest. Excess interest disallowed in a year will be eligible for carry forward up to eight consecutive years subject to the above limits. The provisions will not apply to interest paid or payable up to ₹10 million.

It is relevant to note that the provisions do not correspondingly limit the withholding tax liability or taxability of the non-resident associated enterprise on the interest income.

The provisions will apply from the Financial Year 2017–18 and will apply to interest claimed as a deduction from business income.

C. RATIONALIZATION OF DOMESTIC TRANSFER PRICING PROVISIONS

With a view to reduce transfer pricing compliance and facilitate the ease of doing business, payment of expenditure to specified persons, such as directors, parent and sister companies, etc., are proposed to be excluded from domestic transfer pricing provisions with effect from Financial Year 2016–17. Going forward, domestic transfer pricing provisions will only apply to intercompany transactions if one or both the parties are involved in activities eligible for tax holidays.

CAPITAL GAINS

A. EXTENSION OF CAPITAL GAINS EXEMPTION TO RUPEE DENOMINATED BONDS [SECTION 47 AND SECTION 48]

1. Currently, gains arising on account of appreciation of rupee against foreign currency at the time of redemption of Rupee Denominated Bond of an Indian company is to be excluded from full value of consideration only in those instances where the bonds were initially subscribed by the nonresident.

2. It is proposed to extend the benefit even to those non-residents who are not the initial subscribers and have acquired such bonds subsequently.
3. Further, with a view to facilitate transfer of Rupee Denominated Bonds issued by an Indian company outside India from a non-resident to another non-resident, it is also proposed that such transfer will not be regarded as a taxable transfer.



B. COST OF ACQUISITION IN TAX NEUTRAL DEMERGER OF A FOREIGN COMPANY [SECTION 49(1)]

1. Currently, transfer of shares of an Indian company by a demerged foreign company to a resulting foreign company is not regarded as transfer.
2. It is proposed to provide that cost of acquisition of the shares of Indian company in the hands of the resulting foreign company shall be the same as it was in the hands of demerged foreign company

C. INSERTION OF A NEW CLAUSE WITH RESPECT TO THE PERIOD OF HOLDING AND COST FOR UNITS IN A MUTUAL FUND SCHEME [SECTION 49(2AF)]

1. It is proposed, for the purpose of computing capital gains, period of holding as well as the cost of acquisition in respect of unit or units received on account of the consolidation of mutual fund scheme(s), there shall be included the period for which the unit(s) of consolidating mutual fund scheme(s) were held by assessee.
2. Similarly, cost of acquisition in the consolidating mutual fund scheme(s) shall be deemed to be the cost of acquisition for consolidated mutual fund scheme(s).

D. TAX NEUTRAL CONVERSION OF PREFERENCE SHARES TO EQUITY SHARES [SECTION 49(2AE) AND 47(XB)]

1. Currently, conversion of securities from one form to another is regarded as taxable transfer.
2. Tax neutrality on conversion of bond or debenture into shares of a company is provided, however no neutrality is provided for conversion of preference share into equity share of that company.
3. It is proposed that the conversion of preference share into equity share will not be regarded as a taxable transfer. • Consequential amendments are also proposed in respect of cost of acquisition and period of holding.

E. INVESTMENT IN LONG TERM BONDS FOR LONG TERM CAPITAL GAINS [SECTION 54EC]

1. Currently, gains arising on transfer of a long-term capital asset shall be exempt to the extent of INR 5 million if the assessee invests the whole or any part of capital gains in certain specified bonds, within the specified time.
2. At present, investment in bond issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited is eligible for exemption under this section.
3. It is now proposed to provide that investment in any bond, redeemable after three years which has been notified by the Central Government in this behalf, shall also be eligible for exemption.

F. SHIFTING OF BASE YEAR FOR THE PURPOSE OF COMPUTING CAPITAL GAINS [SECTION 55 AND SECTION 48]

1. Currently, in computing capital gains arising on transfer of capital assets acquired before 01 April 1981, the assessee has been allowed an option to adopt the fair value of the property as on 01 April 1981 or actual cost as the cost of acquisition of such asset.
2. However, practical challenges were faced by assessee due to non availability of fair market value as on 01 April 1981. Accordingly, it is proposed to shift this base year from 01 April 1981 to 01 April 2001 thereby allowing the assessee to substitute fair market value of the capital asset as on 01 April 2001 as the cost of acquisition.
3. Consequentially, the provisions governing the cost of acquisition and cost of improvement are also proposed to be amended.

G. RETROSPECTIVE AMENDMENT TO EXTEND THE CONCESSIONAL RATE FOR LONG TERM CAPITAL GAINS [SECTION 112(1)(C)]

1. Finance Act 2016 provided for concessional rate of taxation of 10% for long-term capital gains arising from the transfer of shares of a company, other than the company in which public are substantially interested to nonresidents, with effect from 01 April 2017.
2. However, the said concessional rate of 10% was initially provided by Finance Act 2012 with effect from 01 April 2013. Accordingly, there was an uncertainty about the applicability of the concessional rate for transfer made during the intervening period (i.e. 01 April 2012 to 31 March 2016).
3. In order to provide the benefit of concessional rate of 10% to non-residents on transfer made after 01 April 2012, it is proposed to retrospectively amend the Finance Act 2016.

H. TAX INCENTIVE FOR THE DEVELOPMENT OF AMARAVATI, ANDHRA PRADESH [SECTION 10(37A)]

A new provision is proposed to be inserted to provide exemption from the capital gains arising on transfer, pursuant to land pooling scheme, by an

individual(s) or a Hindu undivided family, who was the owner of certain specified capital asset as on 02 June 2014.

I. INCENTIVES FOR PROMOTING INVESTMENT IN IMMOVABLE PROPERTY [SECTION 2(42A)]

With a view to promote the real-estate sector and to make it more attractive for investment, it is proposed to amend section 2 (42A) of the Act so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long term capital asset.

ANTI-ABUSE PROVISIONS

A. EXTENSION OF ANTI-ABUSE PROVISIONS TO TAX RECEIPT OF SUM OF MONEY OR PROPERTY WITHOUT CONSIDERATION OR FOR INADEQUATE CONSIDERATION [SECTION – 56(2)(X)]

1. Currently, anti-abuse provisions to tax receipt of sum of money or immovable property or specified movable property without consideration or for inadequate consideration, where the value of such receipt exceeds INR 50,000, as income from other sources are attracted only in instances where the recipients are individuals or Hindu undivided family.
2. Further, these anti-abuse provisions also provide for taxability of receipt of shares of a closely held companies by firm or a company without consideration or for inadequate consideration, where the fair market value of shares exceeds INR 50,000.
3. It is now proposed to extend the aforesaid anti-abuse provisions to all the categories of assesses. However, in this regard, certain exceptions have also been specifically provided.

4. Consequentially, it is further proposed that once the recipient is liable to tax in the aforesaid manner, the value which has been subjected to tax will be available as cost in the hands of such recipient.

B. LIMITATION OF INTEREST DEDUCTION IN CERTAIN CASES [SECTION 94B]

APPLICABLE TO	Interest or similar consideration payable by an Indian company or a permanent establishment of a foreign company in India in respect of any debt: (a) issued by a non-resident associated enterprise; or (b) where associated enterprise <ul style="list-style-type: none"> • provides an implicit or explicit guarantee to the lender; or • deposits a corresponding and matching amount of funds with the lender. and interest or similar consideration exceeds INR 10 million.
Interest expense claim restricted to	(a) 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) in the previous year; or (b) interest paid or payable to the associated enterprise for that previous year, whichever is less

C. NO EXEMPTION FOR LONG TERM CAPITAL GAIN OF LISTED EQUITY SHARES [SECTION 10(38)]

1. Currently, income arising from transfer of a long term capital asset, being equity shares of a company or a unit of an equity oriented fund is exempt from tax if the transaction of sale is undertaken on or after 01 October 2004 and is chargeable to securities transaction tax.
2. It is proposed that the aforesaid exemption will be available to equity shares acquired on or after 01 October 2004 only if on such acquisition securities transaction tax was chargeable.

In line with the recommendations of OECD’s BEPS Action Plan 4, it is proposed to restrict the deduction of excess interest claimed by an entity on debt from its associated enterprise.

Salient features of these provisions are as follows:

Carry forward of interest disallowed	<ul style="list-style-type: none"> • Upto eight assessment years immediately succeeding the assessment year for which the disallowance was first made; and • Allowed as deduction against income from business to the extent of interest restriction specified above.
Exclusions	Business of banking and insurance
Relevant definitions	(a) Debt – it means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head profits and gains of business or profession. (b) Permanent establishment - it includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

3. Certain exceptions in this regard such as acquisition of shares in IPO, FPO, bonus, right issue, etc., for which condition of chargeability of securities transaction tax on acquisition is not applicable, would be notified.

D. CONSIDERATION FOR TRANSFER OF SHARES OTHER THAN QUOTED SHARES [SECTION 50CA]

1. Currently, income chargeable under the head “Capital gains” is computed by taking into account the amount of full value of consideration received or accrued on transfer of a capital asset. To ensure that the full value of consideration is not understated, there are certain provisions for deeming full

value of consideration such as stamp duty value as full value of consideration for transfer of immovable property.

2. It is proposed to insert a new section to provide that where consideration for transfer of share of a company (other than quoted share) is less than the fair market value of such share determined in accordance with the prescribed manner, the fair market value shall be deemed to be the full value of consideration under the head “Capital gains”.

WITHOLDING REQUIREMENTS

TDS ON PAYMENTS TO CALL CENTER [SECTION 194J]

Section 194J provides for TDS @ 10% on payments to a resident towards fees for professional or technical services. It is proposed that TDS @ 2% will apply in respect of payments to persons engaged only in the business of operation of call center.

A. NO TDS ON COMPENSATION RECEIVED UNDER RFCTLAAR ACT, 2013 [SECTION 194LA]

Currently, tax is deducted @ 10% on the compensation on account of compulsory acquisition of any immovable property (other than agricultural land). It is proposed that no tax will be deducted on payments in respect of any award or agreement exempt under section 96 of RFCTLAAR Act, 2013 subject to limitations in section 46 of the said Act.

B. SELF-DECLARATION FOR NO TDS ON INSURANCE COMMISSION [SECTION 197A]

Currently, section 197A permits nil TDS if recipient of certain payments furnishes a self-declaration in Form 15G / 15H. However, payments towards insurance commission beyond threshold limit as specified is not covered under

this section. It is proposed to extend the benefit of nil TDS on the insurance commission as well, if the recipient furnishes such self-declaration.



OTHER PROVISIONS

A. CLAIM OF CREDIT FOR FOREIGN TAX PAID IN CASES OF DISPUTE [SECTION 155(14A)]

It is proposed that where the credit for foreign taxes paid is not given for the relevant assessment year on the grounds that the payment of such foreign tax was in dispute, the tax officer shall rectify the assessment order or an intimation, if the taxpayer within six months from the end of the month in which the dispute is settled furnishes the following documents:

- proof of settlement of such dispute;
- evidence that the foreign tax liability has been discharged; and
- an undertaking that credit of such foreign tax paid has not been directly or indirectly claimed or shall not be claimed for any other assessment year.

B. TIME LIMIT FOR FILING REVISED RETURN [SECTION 139]

Currently, a return of income can be revised before the expiry of one year from the end of the relevant assessment year or before the completion of assessment,

whichever is earlier. It is proposed that the time limit for furnishing the revised return will be available only upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier

C. FEE FOR LATE FILING OF RETURN [SECTIONS 140A, SECTION 234F AND SECTION 271F]

It is proposed to levy a fee where the return is not filed within the due date as prescribed. The proposed fee structure is as under:

Total Income (in INR)	Date of filing return of Income	Fees (in INR)
Upto 0.5 million	Any time after due date	1,000
Above 0.5 Million	On or before 31 December of the Assessment Year	5,000
	On or after January 1 of the Assessment Year	10,000

The above fee will be payable before furnishing the return. Further, consequent to the insertion of said section, penalty u/s 271F for failure to furnish return of income will be omitted.

D. AMENDED TIMELINES FOR ASSESSMENT, REASSESSMENT AND RE-COMPUTATION [SECTIONS 153 AND 245A]

<u>Proceedings</u>	<u>Existing Timelines</u>	<u>Proposed Time lines</u>
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Assessment / Best judgment assessment	Twenty one months from end of the assessment year	Assessment Year 2018-19 Eighteen months from the end of the assessment year Assessment Year 2019-20 Twelve months from the end of the assessment year
Re-assessment	Nine months from end of financial year in which notice is served	Within twelve months from the end of the financial year, if notice is served on or after 1 April 2019
Fresh assessment in pursuance of order by ITAT / order under section 263 / 264 (i.e. orders which are prejudicial to the interest of revenue / assessee)	Nine months from the end of financial year in which order of ITAT is received or order under section 263 / 264 is passed by the prescribed authority	Within twelve months from the end of the financial year in which order is received / passed by the prescribed authority in respect of order passed or received on or after 1 April 2019
Effect to CIT/ITAT order or 263 / 264 order which requires verification of any issue by way of submission of any document or where opportunity of being heard is to be provided		Within twelve months from end of the financial year in which order is received or passed. This timeline will be effective retrospectively from 1 June 2016

Notice for assessment or re-assessment issued prior to 1 June 2016 and assessment or reassessment not completed by 1 June 2016		Two years from end of assessment year in case of scrutiny assessment One year from end of financial year in which notice under section 148 is served in case of re-assessment This timeline will be effective retrospectively from 1 June 2016
Proceedings for settlement of cases to commence from	From the date on which return of income is furnished or in response to notice under section 142 and concluded on the date on which assessment is made; or on the expiry of two years from the end of the relevant assessment year, in case where no assessment is made	In case of time limit of two years it is now proposed that time limit as applicable for assessment / best judgment assessment will be applicable.

E. RESTRICTION ON CASH TRANSACTIONS [SECTIONS 206C, SECTION 269ST AND SECTION 271DA]

1. Receipt of an amount in excess of INR 0.3 million otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account is not permitted in the following cases:

- received from one person in a single day;
- received in respect of a single transaction; or
- received in respect of transactions relating to one event or occasion from a person.

2. The above restriction will not apply to the amount received from Government or any banking company, post office savings bank or a co-operative bank, transactions referred to in section 269SS or transactions as may be notified.

3. If the person receives any sum in contravention of the above provision, then penalty of 100% of the amount received will be levied. Penalty will not be imposed if there were good and sufficient reasons for contravention.

4. Consequent to the aforesaid provision, TCS @ 1% of sale consideration on cash sale of jewellery exceeding INR 0.5 million is proposed to be omitted. It is further proposed that in respect of sale of a motor vehicle exceeding INR 1 million, TCS @ 1% of the sale consideration may not be required to be collected if the buyer is a Government, an Embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state, local authority, public sector company engaged in the business of carrying passengers.

F. AMENDMENTS TO THE STRUCTURE OF AAR [SECTION 245N]

With a view to promote ease of doing business, it is proposed to merge the AAR for income-tax, central excise, customs duty and service tax. It is further proposed that,

- a former Chief Justice of a High Court, or a person who has been a High Court Judge for at least seven years shall also be eligible to be Chairman of the AAR;
- if the Chairman is unable to discharge his functions owing to absence, illness or any other reason, or in the event that the office of the Chairman falls vacant, the senior-most Vice-chairman shall discharge the functions of the Chairman until the new Chairman enters upon his office or until the incumbent Chairman resumes his duties.

This amendment is proposed with retrospective effect from 1 April 2017

G. CLARIFICATION OF 'PERSON RESPONSIBLE FOR PAYING' [SECTION 204]

It is clarified that for furnishing of information under section 195(6) relating to payment of any sum to a non-resident, whether or not chargeable under the provisions of the Act, the person responsible for paying shall be the payer himself or in case of a company, the company itself including the principal officer thereof. This amendment is proposed with retrospective effect from 1 April 2017.

H. INTEREST ON REFUNDS TO DEDUCTOR [SECTION 244A]

It is proposed to grant interest on refund to the deductor @ 0.5% per month or part of a month from the date on which claim for refund is made till the date on which refund is granted. If refund is granted on giving effect to the appellate orders, interest will be granted from the date of payment of tax till the date on which refund is granted. Interest will not be granted if the delay in the proceedings resulting in the refund is attributable to the deductor.

I. WITHHOLDING OF REFUND [SECTION 241A]

It is proposed to insert a new section which authorizes the AO to withhold refund due to the assessee upto the date on which the assessment is made, if notice is issued and he is of the opinion that grant of refund may adversely affect the revenue. However, the AO will be required to record reasons in writing and obtain prior approval of the Principal Commissioner or Commissioner for the same. The above provision will apply from assessment year 2017-18

J. DISALLOWANCE FOR NON-DEDUCTION OF TAX FROM PAYMENT TO RESIDENT [SECTION 58]

With a view to improve compliance of provision relating to TDS, it is proposed that 30% of any sum payable to a resident, on which tax is deductible at source and such tax has not been deducted or after deduction has not been paid within the specified time, shall not be allowed as deduction while computing income from other sources.

K. TRANSPARENCY IN ELECTORAL FUNDING [SECTION 13A]

In order to discourage the cash transactions and to bring transparency in the source of funding to political parties, the following additional conditions are proposed for availing the benefit of the said section:

- No donations of INR 2,000/- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds,
- Political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under section 139.

Further, in order to address the concern of anonymity of the donors, it is proposed to amend the said section to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond.

L. RESTRICTION ON EXEMPTION IN CASE OF CORPUS DONATION BY EXEMPT ENTITIES [SECTION 11 AND SECTION 10(23C)]

Currently, voluntary contributions made by a trust to any other trust or institution, except those made out of accumulated income, is considered as application of income.

It is proposed that any amount credited or paid by a trust or institution, being contributions with specific direction that they shall form part of the corpus of another trust or institution shall not be treated as application of income in the hands of the donee trust or institution.

M. MODIFICATIONS OF OBJECT CLAUSE OF ENTITIES REGISTERED UNDER SECTION 12AA [SECTION 12A]

It is proposed that where a registered trust or an institution has adopted or undertaken modifications of the objects which do not confirm to the conditions of registration, the said trust or institution is required to obtain fresh

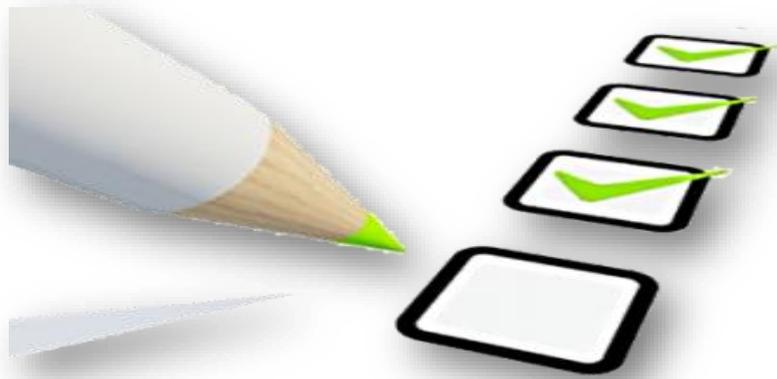
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registration by making an application within thirty days from the date of such adoption or modifications of the objects.

It is further clarified that the said trust or institution is required to file their return of income within the due date as prescribed for filing the return of income.

N. INCREASING THE THRESHOLD LIMIT FOR MAINTENANCE OF BOOKS OF ACCOUNTS IN CASE OF INDIVIDUALS AND HUF [SECTION 44AA]

In order to reduce the compliance burden, for maintenance of books of accounts, on every person being an individual or HUF carrying on business and profession, it is proposed to increase monetary limits, from income of rupees one lakh twenty thousand rupees to rupees two lakh fifty thousand rupees and total sales or turnover or gross receipts from rupees ten lakh rupees to rupees twenty-five lakh rupees.



O. EXCLUSION OF CERTAIN SPECIFIED PERSON FROM REQUIREMENT OF AUDIT OF ACCOUNTS [SECTION 44AB]

In order to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, it is proposed to exclude the eligible person, who declares profits for the year in accordance with the provisions of presumptive income scheme, and his total sales, total turnover or gross receipts, as the case may be, in business does not exceed rupees two crore rupees in such previous year, from requirement of audit of books of accounts under Section 44AB.

P. MEASURE FOR PROMOTING DIGITAL PAYMENT IN CASE OF SMALL UNORGANISED BUSINESS [SECTION 44AD]

Under scheme of presumptive income for small and medium tax payers whose turnover is upto 2 crores rate of deemed profit reduced to 6% from existing 8% in respect of turnover which is by non-cash means.

INDIRECT TAX PROPOSALS



CUSTOM DUTY

CENTRAL EXCISE

SERVICE TAX

ADVANCE RULING UNDER
CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX

R&D CESS ACT

GOODS AND SERVICE TAX

CUSTOM DUTY

With GST on the anvil, the Finance Minister has not announced any significant change in Customs laws. While the general effective customs duty rate has

remained unchanged, the Finance Minister has exempted import duties on specific products, inputs and raw materials to promote the “Digital India” and “Make in India” initiatives of the government.

A. RATE OF DUTY

Median rate of BCD has been retained at 10%.

B. CHANGES TO CUSTOM ACT, 1962

1. Concept of “beneficial owner” has been introduced under Customs law to widen the ambit of definitions of importer and exporter.
2. “International courier terminal” and “Foreign post office” are included in the definition of “Customs station.”
3. Excess duty paid by importer in specified cases will be kept outside the ambit of unjust enrichment for the purpose of claiming refund.
4. Bill of entry for home consumption/ warehousing is to be filed by the end of next day (excluding holidays) from the date on which the vessel, aircraft or vehicle carrying the goods arrives at a customs station. Charges as prescribed are to be levied in case of delayed presentation of bill of entry.
5. Person-in-charge of a conveyance entering or departing from India is required to provide passenger and crew information in the specified format, manner and time to the proper officer. Penalty not exceeding INR 50,000 is to be prescribed for noncompliance.
6. Period for payment of import duty has been prescribed as follows:
 - In case of self-assessment – on the date of presentation of bill of entry
 - In case of assessment, re-assessment or provisional assessment – within one day (excluding holidays) from the date on which the bill of entry is returned to the importer by the proper officer for payment of duty
7. Facility for storage of imported goods in a public warehouse pending clearance has been extended to goods imported for warehousing before their removal. Further, the revised provision does not allow storage of imported goods pending clearance in a private warehouse.
8. For goods imported or exported by post, a label or declaration accompanying the goods shall no more be treated as entry for the purpose of Customs Act.

9. Board will prescribe the form and manner in which such entry shall be made.

10. A person, other than the applicant, who is party to a show cause notice that is pending/ settled by the Settlement Commission shall also be allowed to make an application for settlement of cases.

11. Settlement Commission has been empowered to rectify an error apparent on the face of record within three months from the date of passing order. The above changes are effective from the date of enactment of Finance Bill, 2017.

C. CHANGES TO CUSTOM TARIFF ACT, 1975

1. Exemption to three categories of non-actionable subsidies (such as for research activities, disadvantaged regions in exporting country and promotion of existing facilities to new environmental requirements) from the scope of anti-subsidy investigations has now been withdrawn.
2. Extension of classification for all personal imports through courier service to Chapter 9804.

THE ABOVE CHANGES ARE EFFECTIVE FROM THE DATE OF ENACTMENT OF FINANCE BILL, 2017.

D. CHANGES IN CUSTOM DUTY RATES

To provide a boost to the manufacturing and power sector and to, inter alia, address the issues of inverted duty structure, the following concessions are introduced:

<u>GOODS ON WHICH BCD RATE EXEMPTED/ REDUCED</u>			
GOODS		EXISTING RATE (%)	NEW RATE (%)
Liquefied natural gas (LNG)		5	2.5

<ul style="list-style-type: none"> • Micro ATMs as per standards version 1.5.1; • Fingerprint reader/ scanner; • Iris scanner; • Miniaturised POS card reader for mPOS (other than mobile phones or tablet computers); • Parts and components for use in the manufacture of aforesaid goods 		7.5	NIL
All items of machinery, including instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for (a) initial setting up of fuel cell based system for generation of power or for demonstration purposes; or (b) balance of systems operating on bio-gas or bio-methane or by-product hydrogen		VARIED RATES	5
Catalyst and resin for use in the manufacture of cast components of wind operated electricity generator, subject to actual user condition		7.5	5
Solar tempered glass or solar tempered (anti-reflective coated) glass for manufacture		5	NIL

of solar cells/panels/modules, subject to actual user condition			
Hot rolled coils for use in manufacture of welded tubes and pipes falling under heading 7305 or 7306		12.5	10
Magnesium oxide (MgO) coated cold rolled steel coils for use in manufacture of cold rolled grain oriented steel (CRGO) falling under 7225 11 00		10	5
All parts used in the manufacture of LED lights or fixtures including LED Lamps		VARIED RATES	5
All inputs used in the manufacture of LED (light emitting diode) driver or metal core printed circuit boards for LED lights and fixtures or LED Lamps		VARIED RATES	5
o-Xylene		2.5	NIL
Medium quality terephthalic acid (MTA) and qualified terephthalic acid(QTA)		7.5	2.5
Wattle extract		7.5	2.5
Myrobalan fruit extract		7.5	2.5
Vinyl polyethylene glycol		10	7.5

<u>GOODS ON WHICH BCD RATE INCREASED</u>		
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GOODS	EXISTING RATE (%)	NEW RATE (%)
Cashew nut, roasted, salted or roasted and salted [20081910] – immediate effect	30	45
Parts of filtering or purifying machinery and apparatus for liquids or gases – immediate effect	7.5	10
Co-polymer coated MS tapes/ stainless steel tapes for use in manufacture of telecommunication grade optical fibres or optical fibre cables	NIL	10

<u>GOODS ON WHICH SAD EXEMPTED/REDUCED</u>		
GOODS	EXISTING RATE (%)	NEW RATE (%)
Catalyst and resin for use in the manufacture of cast components of wind operated electricity generator, subject to actual user condition	4	NIL (VALID TILL JUNE 30, 2017)

<u>GOODS ON WHICH SAD EXEMPTION WITHDRAWN</u>		
GOODS	EXISTING RATE (%)	NEW RATE (%)
Populated PCBs for use in manufacture of mobile phones, subject to actual user condition	NIL	2 (VALID TILL JUNE 30, 2017)

<u>GOODS ON WHICH CVD RATE EXEMPTED/ REDUCED</u>		

GOODS	EXISTING RATE (%)	NEW RATE (%)
<ul style="list-style-type: none"> • Micro ATMs as per standards version 1.5.1; • Fingerprint reader/ scanner; • Iris scanner; • Miniaturised POS card reader for mPOS (other than mobile phones or tablet computers); • Parts and components for use in the manufacture of aforesaid goods 	APPLICABLE DUTY	NIL
All items of machinery, including instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for (a) initial setting up of fuel cell based system for generation of power or for demonstration purposes; or (b) balance of systems operating on bio-gas or bio-methane or by-product hydrogen	12.5	6
All parts used in manufacture of LED lights or fixtures including LED lamps	Applicable Duty	6
All items of machinery, including, instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for: (a) initial setting up of	12.5	6

fuel cell based system for generation of power or for demonstration purposes; or (b) balance of systems operating on bio-gas or bio-methane or by-product hydrogen,		
Parts/raw material for use in the manufacture of solar tempered glass, for use in (a) solar photovoltaic cells or modules; (b) solar power generating equipment or systems, (c) flat plate solar collectors, or (d) solar photovoltaic module and panel for water pumping and other applications	12.5	6
Membrane Sheet and Tricot / Spacer for use in the manufacture of RO membrane element for household type filters, subject to actual user condition	12.5	6
Catalyst for use in the manufacture of cast components of Wind Operated Electricity Generator	12.5	NIL

<u>GOODS ON WHICH CVD RATE INCREASED</u>		
GOODS	EXISTING RATE (%)	NEW RATE (%)
Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92	NIL	12.5

THE ABOVE CHANGES ARE EFFECTIVE FROM FEBRUARY 2, 2017.

E. EXPORT DUTY

<u>GOODS ON WHICH EXPORT DUTY LEVIED</u>		
GOODS	EXISTING RATE (%)	NEW RATE (%)
Other aluminum ores including laterite	NIL	15%

1. Limit for availing customs duty exemption on import of goods through postal parcels, packets and letters has been increased from “duty payable of INR 100” to “CIF value of INR 1,000 per consignment.”
2. Exemption limit for duty-free imports (exempted from BCD, CVD and SAD] of buckles, “D” ring, eyes, rivets, studs, etc. imported by a manufacturer of leather footwear, synthetic footwear or other leather products for exports has been increased from 3% to 5% of the FOB value of goods exported during the preceding financial year.

THE ABOVE CHANGES ARE EFFECTIVE FROM FEBRUARY 2, 2017.

CENTRAL EXCISE

There are no major changes to Central Excise since GST is likely to be implemented soon.

The limited changes are largely towards incentivizing goods that promote digital economy and are primarily used in the renewable energy sector.

A. CHANGES TO EXCISE ACT, 1944

The general rate of excise duty remains unchanged at 12.5%.

B. RATE CHANGES (EFFECTIVE FROM 2 FEBRUARY, 2017; APPLICABLE UNTIL 30 JUNE, 2017)

GOODS	EXISTING RATE (%)	NEW RATE (%)
All items of machinery, including instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for (a) initial setting up of fuel cell based system for generation of power or for demonstration purposes; or (b) balance of systems operating on bio-gas or bio-methane or by-product hydrogen	12.5	6
Parts/raw material for use in the manufacture of solar tempered glass, for use in (a) solar photovoltaic cells or modules; (b) solar power generating equipment or systems, (c) flat plate solar collectors, or (d) solar photovoltaic module and panel for water pumping and other applications	12.5	6
Membrane Sheet and Tricot / Spacer for use in the manufacture of RO membrane element for household type filters	12.5	6
Catalyst for use in the manufacture of cast components of Wind Operated Electricity Generator	12.5	NIL
Resin for use in the manufacture of case components of wind operated electricity generator	12.5	NIL

Solar tempered glass for use in the manufacture of (a) Solar photovoltaic cells or modules; (b) Solar power generating equipment or systems; (c) Flat plate solar collectors; (d) Solar photovoltaic module and panel for water pumping and other applications	NIL	6
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1. Excise duty on micro ATMs as per standards version 1.5.1, fingerprint reader/scanner, iris scanner, miniaturised point-of-sale (POS) card reader for mPOS (other than mobile phones or tablet computers) and parts and components for use in the manufacture of such products has been exempted till 30 June, 2017. Excise duty rate on all parts for manufacture of LED lights or fixtures, including LED lamps has been reduced to 6% until 30 June, 2017.
2. Exemption on POS devices and goods used for manufacture of POS devices has been extended by three months until 30 June, 2017.
3. Excise duty rate on motor vehicles for transportation of more than 13 persons including the driver has been reduced to 12.5% with retrospective effect from 1 January, 2017.

C. CHANGES TO CENTRAL EXCISE RULES, 2002

Time limit of three months (further extendable by six months, subject to sufficient cause being shown) has been prescribed for deciding the remission of duty (effective 2 February, 2017).

D. CLARIFICATION

1. It has been clarified that non-applicability of exemptions under notifications issued under Section 5A of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA.

Thus, EOUs are eligible to claim excise exemption in respect of inputs/ raw materials procured by them domestically and utilized for manufacture of goods that are cleared by them to DTA.

E. ADVANCE RULING

1. Changes made in provisions for advance ruling (for excise, customs and service tax).
2. These include:
 - Authority for advance ruling would be same as under Income Tax
 - Fee for application of advance ruling increased to Rs. 10,000
 - Time to pronounce ruling increased from 90 days to six months from date of receipt of application
 - Existing cases shall stand transferred

F. CENVAT CREDIT (EFFECTIVE 2 FEBRUARY, 2017)

Time limit of three months from the date of receipt of application (further extendable by six months) has been prescribed for approval of requests regarding transfer of unutilized cenvat credit lying in accounts in case of transfer of business (e.g. on account of sale, merger, amalgamation or lease)

SERVICE TAX

The effective rate of service tax remains unchanged. Further, no major changes made in service tax exemptions or legislative provisions.

A. CHANGES IN EXEMPTIONS WITH EFFECT FROM 2 FEBRUARY, 2017

1. Scope of exemption for services provided by Indian Institutes of Management by way of 2-year full-time post-graduate programmes has been widened – earlier, only residential programs were exempted; however, all 2-year full-time post-graduate programmes would now be exempted.
2. Exemption has been provided to services of transport of passengers provided by airlines to the government against viability gap funding (VGF), embarking or terminating from a Regional Connectivity Scheme Airport. Exemption is available up to one year from date of commencement of such airports.

B. CHANGES EFFECTIVE FROM DATE OF ENACTMENT OF FINANCE BILL, 2017

1. Exemption from service tax for services by way of carrying out any process amounting to manufacturing or production of goods (excluding liquor for human consumption) shifted from Negative List to Mega Exemption Notification. There is no change in effective taxability.
2. Exemption for intermediate production process as job worker has been restricted to cases where such process does not amount to manufacture. In case the process amounts to manufacture, exemption is already covered in another clause.

C. CHANGES EFFECTIVE FROM RETROSPECTIVE DATE

1. Retrospective exemption to life insurance services provided by Army, Naval and Air Force Group Insurance Funds to members of defence forces. The amendment is effective from 10 September 2004.
2. Retrospective exemption for payment of service tax on one-time upfront amount (premium, salami, cost price and development charge by whatever name called) for long-term lease of 30 years or more of industrial plots by State Government Industrial Development Corporation or Undertaking. The amendment is effective from 1 June, 2007 to 21 September, 2016.
3. The following should be noted:
 - This change is line with a similar exemption issued from 22 September, 2016 onwards.
 - Refund is to be filed for service tax already collected. Application for refund is to be filed within a period of six months from the date of enactment of Finance Bill, 2017.
 - Retrospective amendments have been introduced for valuation of works contract where taxable value recovered from customer includes the value of land as well. In such cases, the amendment prescribes that the value for payment of service tax would not include the value of land.

D. CHANGES IN VALUATION RULES

The following change will be effective from the date of enactment of the Finance Bill 2017:

- For works contract services, service tax would be payable at normal rate if the value of land or undivided share of land is not included. In case the value of land or undivided share of land is included in the total contract value, service tax would be payable at reduced value as provided from 1 July 2010.

ADVANCE RULING UNDER CUSTOMS, CENTRAL EXCISE AND SERVICE TAX

1. AAR under Income-tax Act, 1961 to henceforth adjudicate Customs, Central Excise and Service tax advance ruling matters
2. Pending applications before the AAR (Central Excise, Customs and Service Tax) to be transferred to AAR under Income-tax Act, 1961
3. Application fee increased from INR 2,500 to INR 10,000
4. The time-limit for pronouncement of ruling increased from ninety days to six months.

R & D CESS ACT

R&D Cess Act is proposed to be repealed from 1 April, 2017. In such case, w.e.f April 2017, no R&D Cess would be paid on import of technology under a foreign collaboration.

In such case, no adjustment from service tax would be required w.e.f 1 April, 2017.

GOODS AND SERVICE TAX ACT



The Finance Minister reiterated the progress made on the GST front and also highlighted the momentum of the government to introduce GST at the earliest. The following were highlighted in relation to GST:

- GST Council has finalized its recommendations on most issues based on consensus;
- Preparation of IT system for GST is on schedule;
- Extensive reach-out efforts to trade and industry for GST will commence from 1 April, 2017.

CHANGES IN OTHER LAWS



CORPORATE RESTRUCTURING
UNDER NCLT

REAL ESTATE (REGULATION AND
DEVELOPMENT) ACT, 2016

INSOLVENCY AND BANKRUPTCY
CODE 2016

FOREIGN DIRECT INVESTMENT

SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992

CORPORATE RESTRUCTURING UNDER NCLT

1. Government of India has recently notified provisions of the Companies Act, 2013 (the 2013 Act) relating to merger, amalgamation, winding-up etc., which will now be exercised by National Company Law Tribunal (NCLT), a quasi-judicial authority.

2. NCLT is envisioned as a fast track dedicated quasi-judicial forum for handling matters arising under the 2013 Act, Insolvency and Bankruptcy Code 2016 and other legislations.

3. Persons who can represent a case before NCLT now includes professionals like Chartered Accountants, Company Secretaries and Cost and Management Accountants in addition to legal practitioners. 11 benches of NCLT have been constituted which will have jurisdiction over various States / Union Territories of India.

4. Illustrative matters requiring NCLT approval.

- Scheme of arrangement, merger, demerger
- Reduction of capital including securities premium • Conversion of public company into private company
- Re-opening of books of account and recasting of financial statements
- Consolidation or division of share capital resulting in change in voting percentage of shareholders
- Change in financial year of company (other than April-March)
- Voluntary revision of financial statements or Board's Report
- Compounding of offences
- Approval of revival plan of delinquent corporate debtor
- Winding-up of companies / LLPs.

5. Highlights of changes having implications on corporate restructuring such as amalgamation, de-merger etc.

- Certificate from statutory auditor to be filed with NCLT that the accounting treatment in the Scheme is in accordance with Accounting Standards;
- Valuation to be done by a registered valuer. Till registered valuer provisions are notified, valuation by independent merchant banker

registered with SEBI or independent practicing chartered accountant having minimum experience of 10 years

- Joint application for sanction of the Scheme can be filed
- Meeting of creditors may be dispensed with if 90% in value agree and confirm to the Scheme through an affidavit
- Purchase of equity shares of minority shareholders by 90% shareholder (acquirer and person acting in concert or any person or group of persons)
- Notice of shareholders' / creditors' meeting should also be filed with Income tax authorities, RBI, SEBI, CCI, stock exchanges and other sectoral regulators/ authorities which are likely to be affected.
- Objection to the scheme can be made only by persons holding at least 10% of shareholding or having outstanding debt of at least 5% of total debt.

NCLT is expected to ease the burden on the judiciary and speed-up the process relating to reorganization of companies.

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

A. INTRODUCTION

1. Ministry of Law and Justice has notified the Real Estate (Regulation and Development) Act, 2016 ('RERA') which has come into force effective 1 May 2016.

2. RERA aims at ensuring efficiency and transparency in the real estate sector, protecting consumer interest by promoting fair play in the sector and encourages timely delivery of projects. RERA envisages achieving the said objectives by:

- a) Establishing the Real Estate Regulatory Authority (Authority) for regulation and promotion of the real estate sector:
- Registration of the real estate project and,
 - Registration of the real estate agents.

- b) Ensuring sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers in the real estate sector.
- c) Establishing the Real Estate Appellate Tribunal.

B. PRIOR REGISTRATION OF REAL ESTATE PROJECTS

All real estate projects need to be registered with the RERA before the Promoter advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any real estate project, or part of it, in any planning area except if :-

- The area of land proposed to be developed is ≤ 500 Sq. m
- The number of apartments proposed to be developed ≤ 8
- The Promoter has received completion certificate for a real estate project prior to commencement of RERA
- The project is only for the purpose of renovation / repair / re-development which does not involve re-allotment and marketing, advertising, selling or new allotment of any apartments, plot or building in the real estate project.

Further, each 'Phase' is to be treated as standalone real estate project requiring fresh registration.

C. ON-GOING REAL ESTATE PROJECTS - REGISTRATION REQUIREMENTS

1. Projects completed with the completion certificate issued as on the date of commencement of RERA - Does not require any registration with the RERA
Project completed, however completion certificate is pending as on the date of commencement of the RERA - Will require registration with the RERA within a period of 3 months
2. All on-going projects – will require registration with the RERA within a period of 3 months.

D. MONETARY CONSIDERATION

1. 70% of the amounts realized from the allottees shall be deposited in a separate account (to be maintained in a scheduled bank) by the developer / promoter.
2. Withdrawal of funds from the bank account to be based on certification from an engineer, architect and a chartered accountant in practice certifying the withdrawal is proportionate to the percentage of completion of project.
3. Utilization of such funds to cover the cost of construction and land cost.
4. Maximum advance / application fee that can be received by the promoter / developer, prior to executing a written agreement for sale is 10% of the cost of the apartment.

E. PENALTIES

1. If any promoter contravenes the provisions of registration - liable to penalty upto 10% of the estimated cost of project as determined by the Authority.
2. If any promoter does not comply with the orders, decisions or directions issued or violate the provisions of registration - punishable with imprisonment upto 3 years or with fine upto 10% of the estimated cost of the project, or with both.
3. If any promoter provides false information or contravenes the provisions of registration of real estate projects - penalty upto 5% of the estimated cost of the project.
4. If any promoter contravenes any other provisions of RERA - penalty upto 5% of the estimated cost of the project as determined by the Authority.

G. IMPACT ON REAL ESTATE SECTOR

1. Initial bottleneck - A lot of work is to be done to get the existing and new project registered
2. Tight liquidity - Land and approval costs to be borne out of internal accruals as pre-launch concept would end.
3. Increase in project launch time - The project launch time may increase since a lot of time will be required in finalizing finer details before launching a project.
4. Consolidation in the real estate sector is envisaged.

INSOLVENCY AND BANKRUPTCY CODE, 2016

A. INTRODUCTION

1. Insolvency and Bankruptcy Code 2016 (“Code”) aims at speedy resolution of insolvency proceedings was enacted in May 2016. This is a consolidated law dealing with insolvency and bankruptcy matter on an all India basis. With enactment of the Code:

- Sick Industrial Companies (Special Provisions) Act 1985 (SICA) is repealed. Consequently, the cases pending before Board for Industrial and Financial Reconstruction (BIFR) stand abated
- Provisions of the Companies Act 2013 dealing with Revival and Rehabilitation of Sick Companies are omitted

2. National Company Law Tribunal (NCLT) set up under the Companies Act 2013 for companies and LLPs; and Debt Recovery Tribunal (DRT) set up under the Recovery of Debts Due to Banks and Financial Institutions Act 1993 Act for individuals and partnership firms are the adjudicating authorities under the Code.

B. KEY FEATURES OF THE CODE

1. Single legislation to deal with insolvency of Companies / LLPs (except to entities in financial service sector like banks, insurance, broking, NBFC etc.) and bankruptcy of individuals and partnership firms.

2. Code contains separate provisions broadly dealing with

- In case of companies and LLPs – insolvency resolution and liquidation process
- In case of individual and partnership firms – fresh start, insolvency resolution and bankruptcy process.

C. CREDITOR IN CONTROL APPROACH

1. Creditors can file insolvency application independently against a corporate debtor who has defaulted in repayment of debts as per the agreed terms.

2. Definition of “Creditor” is widened to include any person to whom debt is owed and includes a financial creditor, an operational creditor (trade creditor, unpaid employees etc.), a secured creditor, an unsecured creditor and a decree holder.

3. The Code provides for establishment of an institutional framework viz.:

- Insolvency and Bankruptcy Board of India (IBBI) – (i) overseeing the function of insolvency intermediaries i.e. insolvency professionals, insolvency professional agencies and information utilities; and (ii) regulating the insolvency process.
- Insolvency Resolution Professionals – CA, CS, CMA, Advocates and others having prescribed qualification to aid in insolvency resolution process
- Information Utilities – to collect, collate, authenticate and disseminate financial information of debtors in centralised electronic databases for verification
- Designated Adjudicating Authorities – (i) NCLT and National Company Law Appellate Tribunal (NCLAT) for companies and LLPs; and (ii) DRT and Debt Recovery Appellate Tribunal (DRAT) for individuals and partnership firms

4. One of the key objective of the Code is to ensure time bound insolvency resolution process. The Code mandates resolution to be completed in 180 to 270 days. Also, it provides for fast track insolvency resolution process in specified cases where the process is to be completed within 90 to 135 days.

D. MORATORIUM

1. Relief to corporate debtor from any suits / proceedings till the insolvency resolution process is disposed off by NCLT

2. Mandatory liquidation of corporate debtor if insolvency resolution process is rejected by NCLT or not completed within the time limit provided by NCLT.

3. Code provides for order of priority for payments of dues under liquidation.

4. Cross border insolvency: Central Government may enter into agreement with any foreign country for enforcing the provisions of the Code in relation to assets of the corporate debtor situated in such foreign country.

E. ROLE AND RESPONSIBILITIES OF INSOLVENCY RESOLUTION PROFESSIONALS

1. Conduct the insolvency resolution process.
2. To take over management of the corporate debtor and manage the affairs of the corporate debtor
3. To have access to all the books of accounts, records and other relevant documents of the corporate debtor
4. To act as liquidator in case of liquidation of corporate debtor.

F. LIKELY IMPACT OF THE CODE

1. Ensure speedy recovery of dues and reduce strain on lender's ability to relend.
2. Improve investors' confidence and credit flow in the economy.
3. Expedite revival and rehabilitation of distressed corporates.
4. Simplify and streamline process of winding up of corporates.

FOREIGN DIRECT INVESTMENT

1. Foreign Direct Investment (FDI) in India needs to be undertaken in accordance with the FDI policy formulated by the Government of India. FDI upto 100% is permitted in most sectors. There are sector-specific caps on foreign equity investment in certain sectors like insurance, pension, defense, banking, basic and cellular telecommunications services, civil aviation, retail trading etc.

2. FDI can be made through two routes viz.

- Automatic route: A foreign investor or an Indian company does not need the approval of the government or RBI to make investment in India

- Approval route: Proposed investments that do not qualify for the automatic route must be submitted to the Foreign Investment Promotion Board (FIPB).

3. Investment in certain sectors is prohibited even under approval route for e.g. lotteries, gambling, betting including casinos, manufacturing of cigarettes, construction of farm houses, atomic energy, railway operations (other than "railway infrastructure"), trading in transferable development rights, chit funds and "Nidhi" companies etc.

4. Recent changes in FDI Government has enhanced / liberalized FDI in various sectors, subject to conditions.

Key changes are highlighted below:

- FDI in insurance, pension, asset reconstruction, e-commerce, construction development projects, defence, broadcasting, banking, plantation, civil aviation, credit information, satellites, financial services, food products and, "Other Financial Services" enhanced / liberalized subject to conditions
- FDI in "Other Financial Services" has been permitted under automatic route if such services are regulated by any financial sector regulator like viz. RBI, SEBI, IRDA, PFRDA, NHB etc. Minimum capitalization norms specified for NBFCs has been removed subject to meeting the capitalisation norms specified by the concerned Regulator. FDI in unregulated "Other Financial Services", will be permitted under Government approval route.
- FDI is also permitted under the automatic route (as against earlier Government approval route) in LLPs operating in sectors/ activities where 100% FDI is allowed under automatic route and there are no FDI-linked performance conditions.
- To simplify the procedures for Indian Companies to attract foreign investments, the distinction between different types of foreign investments i.e. FDI / FPI / FII / QFI / NRI etc., have been done away with and replaced with composite caps.

- Investment by NRI in shares / convertible debentures on non-repatriation basis is deemed to be domestic investment at par with the investment made by residents.
- Eligible foreign investors have been permitted to make investment under automatic route in units of AIF, REIT, InvIT as against approval route.
- Purchase or sale of shares of Indian company between resident and nonresident for payment on deferred basis allowed.
- Indian company engaged in a sector covered under automatic route permitted to issue shares to non-resident by way of swap of shares on automatic route.
- FPIs allowed to invest in unlisted non-convertible debentures irrespective of the sector in which the issuing company operates.



SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (SEBI ACT)

The proposed amendments to the Securities and Exchange Board of India Act, 1992 (SEBI Act) are related to the Securities Appellate Tribunal (SAT) under the SEBI Act.

Particulars	Existing Provisions	Proposed Changes in the Finance Bill, 2017
Number of SAT	Possible to have 1 or more SAT	Only 1 SAT
Jurisdiction of SAT	No provision to set up Jurisdictional Benches	SAT may have 1 or more jurisdictional Benches
Members of SAT	Presiding officer and 2 members to be determined by Central Government	Presiding Officer, Judicial Members and Technical Members to be determined by Central Government

Structural changes in the constitution of SAT by inclusion of judicial members and technical members to ensure that the decisions are balanced from point of view of sector specialties and legal expertise and experience.