Accelerating the momentum
Key budget proposals

Change in *tax rates*

- There is no change in slab rates for personal taxation. Further, the rate of surcharge has been increased from 12% to 15% for individuals with income exceeding 10 million INR.
- The tax rate for companies with a turnover up to 5o million INR has been marginally reduced to 29% as against the 30% tax rate applicable to all other companies.
- Option to avail of reduced tax rate of 25% has been made available to manufacturing companies set up after 1 March 2016 subject to the company not claiming any profit or investment-linked deductions.
- There is no change in the peak rate of excise duty, customs duty and the base rate of service tax.
- Krishi Kalyan Cess (KKC) is proposed to be levied with effect from 1 June 2016 at the rate of 0.5%, which shall the make effective rate of service tax 15% (including Swachh Bharat Cess). Credit of KKC paid on input services shall be allowed to be used for payment of KKC.
- Infrastructure cess is to be levied on the manufacture of motor vehicles at the following rate, without input tax credit of the proposed cess:
  - Petrol/CNG/LPG vehicles not exceeding 1,200 cc: @ 1%
  - Diesel-driven motor vehicles not exceeding 1,500 cc: @ 2.5%
  - SUVS, sedans and others: @ 4%
- Clean Energy Cess levied on coal, lignite and peat has been renamed Clean Environment Cess and the rate increased from 200 INR per tonne to 400 INR per tonne.

Make in *India*

- Investment allowance has been rationalised to allow acquisition and installation before the period of expiry, i.e. 31 March 2017 as against the dual condition of acquisition and installation in the same year.
- With a view to promote 'Make in India', various amendments have been made to the rate of customs duty and central excise duty, in specific sectors like information technology hardware, capital goods, defence production, textiles, chemicals and petrochemicals, and maintenance, repair and overhauling of aircraft and ships, etc.
- Excise duty on ready-made garments with retail price of 1,000 INR or more will be levied @ 2% (without CENVAT credit) or 12.5% (with CENVAT credit).
- Excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) will be levied on certain articles of jewellery. A higher threshold exemption of up to 60 million INR in a year is also prescribed, provided the preceding years' clearance is less than 120 million INR.
- 100% FDI under the approval route is to be allowed in the marketing of food products produced and manufactured in India.

Tax litigation and *dispute resolution*

- Clarity on non-applicability of Minimum Alternative Tax (MAT) provisions for foreign companies having no business presence in India
- Right of the tax department to appeal against the directions of the Dispute Resolution Panel to be withdrawn w.e.f. 1 June 2016
- Clarification introduced in respect of availability of a beneficial rate of 10% on long-term capital gains on the sale of private company shares by a non-resident
- CBDT has issued instruction on 'stay of disputed tax demand' pending the resolution of first appeal upon payment of 15% of disputed demand
- Application for waiver of interest or penalty shall be disposed of within 12 months by the principal commissioner or commissioner
- Provision for furnishing of bank guarantee introduced in lieu of provisional attachment of property during the course of assessment or reassessment proceedings
- Revision of entire penalty scheme on concealment of income. The proposed scheme to provide for a graded system of penalty for concealment of income. Penalty rate of 50% is proposed for under-reporting of income and 200% for misreporting of facts from the existing rates of 100–300%. Remission of penalty in certain cases where taxes have been paid and appeal is not filed
- A special window has been provided to settle cases which are pending at first appellate level. Under this window, the taxpayer needs to pay tax and interest till the date of assessment and a 25% penalty (in specified cases) to finally settle the dispute and get immunity from prosecution. A similar amendment is proposed for indirect tax cases.
- A settlement window has been proposed for taxpayers where a dispute is pending at any level as on 29 February 2016, and such a dispute had arisen/was validated on account of a retrospective amendment. In this case, only tax is required to be paid and a pending appeal is to be withdrawn before applying for such a window. Immunity from prosecution will also be provided under this window.

BEPS: Country by country reporting *(CbCR)*

- Indian-headquartered Multinational Enterprises (MNEs) with global consolidated revenues exceeding 750 million Euro are required to file CbCR from FY 2016-17 onwards, following OECD's final report on BEPS Action Plan 13.
- Indian subsidiaries of foreign MNEs are also required to furnish CbCR in India in specified instances.
- CbCR is to be filed by the due date for filing of income tax returns. Further, stringent penalties have been prescribed for non-filing/delayed filing/inaccurate filing of CbCR.
- The concept of a master file providing a high-level overview of an MNE's global transfer pricing practices has been introduced. Detailed rules are to be framed.

Phasing out of incentives and *deductions*

- Sunset date introduced for claiming a tax holiday for SEZ units—31 March 2020; deduction for infrastructure facility including power generation and distribution, development of SEZ and production of mineral oil and natural gas—31 March 2017
- Weighted deduction of expenditure incurred on in-house scientific research to be restricted to 150% from 1 April 2017 till 31 March 2020 and 100% thereafter
- Phase out of weighted deductions available for contributions made for scientific research activities and for eligible social and skill development projects

Widening of *tax base*

- Introduction of equalisation levy @ 6% on payment made to a non-resident towards online advertisement/digital advertising, except where such non-resident has a Permanent Establishment (PE) in India
- Tax collection @ 1% from purchaser on sale of a motor vehicle in excess of 1 million INR and goods sold or services provided (that are not otherwise subject to withholding tax), in excess of 0.2 million INR in cash
- 10% additional tax proposed on individuals, Hindu Undivided Family (HUF) and firms on receipt of dividends from a domestic company, where such dividend exceeds 1 million INR
- Exemption from service tax has been withdrawn on the following:
  - Construction, erection, commissioning or installation of original works pertaining to monorail or metro on contracts signed on or after 1 March 2016
  - Service of transportation of passengers by a stage carrier w.e.f. 1 June 2016
  - Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India

Financial sector *reforms*

- New taxation regime for securitisation trust to provide for a tax pass-through status and taxation in the hands of investors
- Dividend Distribution Tax (DDT) exemption for dividends declared by an Special Purpose Vehicle (SPV) held by business Trusts (BTs, which include REIT[1] and InvIT[2]) out of the income of such SPV for the period starting from the date of acquisition by BTs subject to meeting certain shareholding criteria
- Special incentives such as capital gain exemption, reduction in MAT rate, exemption from DDT for taxation of units located in an international financial services centre (IFSC) set up under the SEZ Act, 2005
- As in the case of scheduled and non-scheduled banks, provision of up to 5% made for bad and doubtful debts by non-banking financial companies proposed to be allowed as deduction
- Proposed changes in FDI policy
  - Foreign Investment Promotion Board (FIPB) approval shall not be required for foreign investment in the insurance and pension sectors. Concerned regulator to verify Indian management and control
  - 100% FDI in asset reconstruction companies (ARCs) to be permitted through the automatic route. Foreign portfolio investors (FPIs) to be allowed up to 100% of each tranche in securities receipts issued by ARCs subject to sectoral caps
  - Investment limit for foreign entities in Indian stock exchanges to be enhanced from 5 % to 15% on par with domestic institutions
  - All financial services activities (except banking) regulated by the financial services regulator shall be under the automatic route
- Proposal to make necessary amendments in the SARFAESI Act[3] to enable the sponsor of an ARC to hold up to 100% stake in the ARC and permit non-institutional investors to invest in securitisation receipts. This will help tackle the problem of stressed assets in the banking sector.
- A number of measures will be undertaken to facilitate the deepening of the corporate bond market and new derivative products will be developed by SEBI in the commodity derivatives market.

1. Real Estate Investment Trust
2. Infrastructure Investment Trust
3. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Ease of doing *business*

- Processing of tax returns filed by taxpayers not to be withheld merely because the tax assessment has been initiated for that year.
- A legislative framework has been introduced to create an electronic interface between taxpayers and tax authorities.
- Introduction of the concept of place of effective management for the determination of residential status of foreign companies has been deferred for one year—i.e. it is to be applicable from FY 2016-17 along with the introduction of transitional provisions.
- Withholding tax provisions will be rationalised effective 1 June 2016 to provide relief to small taxpayers. Proposed measures include increasing threshold limits, reduction in withholding tax rates and extension of exemption to rental income upon self-certification.
- Double Taxation Avoidance Agreement (DTAA) benefit has been allowed for withholding tax purposes on the distribution by alternate investment funds to non-resident investors.
- A higher rate of withholding tax will not be applicable to a non-resident not having a Permanent Account Number subject to certain prescribed conditions.
- The threshold limit for presumptive taxation for businesses is proposed to increase from 10 million INR to 20 million INR, provided there is continuity in claiming presumptive base taxation for five years.
- Presumptive taxation @ 50% has been proposed for professionals where the gross receipt does not exceed 5 million INR.
- The number of returns to be filed by a central excise assessee (above the prescribed threshold) has been reduced from 27 to only 13 returns, i.e. 1 annual return and 12 monthly returns.
- Revision of returns has been extended to central excise. The revised returns are to be filed by the end of the calendar month in which the original returns are filed.
- Interest rates on delayed payment under service tax, customs and central excise have been rationalised at 15%. In case service tax is collected but not deposited, the interest rate is to be 24%.

- Manufacturers with multiple manufacturing units have been allowed to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.
- Relevant central excise rules have been revised to allow duty exemptions to importers/manufacturers based on self-declaration instead of obtaining permissions.
- The period of warehousing has been extended for 100% EOU[4], EHTP[5], STPI[6] or any warehouse wherein manufacture or other operations have been permitted:
  - Capital goods: Till their clearance from warehouse (currently five years)
  - Other than capital goods: Till consumption or clearance from the warehouse (currently three years)
- Power of arrest under the service tax law is proposed to be restricted only to situations where tax has been collected but not deposited with the exchequer and the amount of such tax not paid is more than 20 million INR.
- To promote investments in the manufacturing sector, there is a proposal to accord residency status to foreign investors subject to certain conditions. Currently, these investors are granted a business visa only up to five years at a time.
- The basket of eligible FDI instruments will be expanded under Foreign Exchange Management Act (FEMA) regulations to include hybrid instruments subject to certain conditions. The proposal is expected to rationalise the policy framework for redeemable instruments such as redeemable preference shares and optionally convertible debentures.
- A bill will be introduced to amend the Companies Act, 2013, in the current Budget Session of the Parliament for further simplification, including creating an enabling framework for start-ups and speeding the incorporation of company (as fast as one day).
- An amendment will be made to the definition of foreign source under the Foreign Contribution Regulation Act, 2010, to exclude domestic companies with more than one-half capital held by foreign companies, subject to FEMA guidelines.

4. Export Oriented Unit
5. Electronic Hardware Technology Park
6. Software Technology Parks of India

Significant amendments to CENVAT Credit Rules ***(CCR)***

- Definition of capital goods and inputs amended (capital goods of value up to 10,000 INR per piece to be availed of as 'inputs')
- Rule 6 of CCR, which provides for reversal of credit in respect of inputs and input services used in the manufacture of exempted goods or for provision of exempted services rationalised. Key features include:
  - Full credit of input or input services used exclusively in dutiable final products/taxable output services to be available
  - Proportionate credit available for common inputs/input services
  - Existing rule 6 of CCR to continue to be in operation up to 30 June 2016
  - No CENVAT credit to be allowed on capital goods that are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service
- Amendments to allow an input service distributor to distribute the input service credit to an outsourced manufacturing unit in addition to its own manufacturing units. Specified conditions/procedure to be followed for distribution of credits

Exemptions and ***benefits*** granted

- Additional deduction @ 30% of new employee cost extended to all sectors, subject to specified conditions
- Time period for acquisition or construction of self-occupied house property for claiming deduction of interest increased from three years to five years
- Exemption from taxation for foreign mining companies undertaking display of uncut and unassorted diamonds in special notified zones in India
- Exemption from taxation for foreign oil companies storing crude oil in India pursuant to an agreement with the central government and subsequent sale there from
- Benefit of additional depreciation of 20% extended to entities engaged in power transmission
- Indian patent box regime introduced with a lower tax rate @ 10% on royalty income from patents developed and registered in India. Further, no MAT to apply on such income
- Weighted deduction @ 130% of new employee cost extended to all sectors, subject to specified conditions
- 100% profit-linked incentive proposed for affordable housing projects, subject to certain conditions
- To promote the Start Up India initiative:
  - A new provision has been proposed to provide long-term capital gain exemption on investments up to 5 million INR in notified units.
  - Capital gain exemption will be provided on sale of residential property by an individual or HUF.
  - 100% profit-linked deduction is proposed for start-up businesses, subject to certain conditions and applicability of MAT.
- With a view to support the export sector, the duty drawback scheme has been widened.

- Exemption from service tax has been provided to housing projects where each unit has a carpet area of up to 60 sq m subject to specified conditions.
- Service tax exemptions have been granted to various organisations such as SEBI[7], IRDA[8] and EPFO[9].
- Exemption withdrawn on the following services is being now restored for contracts entered into prior to 1 March 2015:
  - Specified services related to construction, erection, etc., provided to the government, a local authority or a government authority.
  - Specified services related to construction, erection, etc., of original works pertaining to an airport and port
  - The above exemption to be available for services rendered till 31 March 2020
- Excise duty exemption, presently available to concrete mix manufactured at a site for use in construction work, has been extended to ready mix concrete.

Other significant announcements and *changes*

- Undisclosed income up to FY 2015-16 can be declared by paying 45% of the fair market value of gross undisclosed income/assets in the form of taxes, surcharge and penalty. The scheme will provide immunity from other laws. However, the scheme will not apply to in certain cases:
  - Assessment in progress
  - Search or survey cases where time for issuance of notice has not expired
  - Information received from a foreign country under exchange of information
- The time limit to complete various assessments has been reduced by three months as compared to existing time limits. More importantly, an order giving effect to orders passed by appellate authorities has to be mandatorily passed within three months, failing which an additional interest of 3% will be payable.

7. The Securities and Exchange Board of India
8. Insurance Regulatory and Development Authority
9. Employees' Provident Fund Organisation

- The exemption limit of employer's contribution to the superannuation fund has been enhanced to 1,50,000 INR from 1,00,000. Further exemption of employer's contribution to PF has been limited to 12% of salary or 1,50,000 INR, whichever is lower.
- Exemption on withdrawal has been granted to contributions made on or after 1 April 2016 by an employee (other than an excluded employee) participating in a recognised PF and/or superannuation fund/national pension scheme for up to 40% of the accumulated balance attributable to such contributions.
- Provisions have been introduced for amortisation of fee paid for purchase of spectrum over the period of contract.
- Advance tax payment schedule has been synced with that of corporate taxpayers effective 1 June 2016. Eligible assessees opting for presumptive taxation under section 44AD are required to pay advance tax in one instalment, i.e. on or before 15 March
- The period for payment of interest on refund, including payment of interest on refund arising from self-assessment tax, has been rationalised.
- An additional condition has been introduced for claiming tax neutrality on the conversion of a company into an LLP—the book value of the total asset should not exceed 50 million INR in the three previous years.
- For computation of capital gains where the date of agreement and date of registration are not the same, the stamp duty value as on the date of the agreement is to be considered where the consideration/part consideration has been received.
- Services by way of assignment of right to use the radio frequency spectrum by the government and subsequent transfers have been clarified to be under the service tax net.
- The time limit for filing of service tax refund claims has been amended to one year from the date of receipt of payment (where services have been completed) or issuance of invoice (in case of advance payment), whichever is later.
- A manufacturer or service provider above a certain threshold will be required to file an annual return by the 30th day of November of the succeeding year in the specified form effective 1 April 2016.
- The period of limitation under service tax, central excise and customs has been increased by one year for cases not involving fraud, suppression of facts, etc.

Notes

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Data Classification: DC0