

Budget Panorama 2016



Analysis of Key Proposals in Finance Bill 2016

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Foreword

An independent yet global economy is an ideal situation that each country tries to achieve. With global economic slowdown, mounting social unrest, terrorism and border disputes, each country is trying more innovative ways to achieve a fine balance of globalisation and localisation. India being one of the fastest growing economies in the world at the moment is however not immune to any of the problems the world is facing. A budget is a key event in India's economic calendar to ensure that the Indian economy stays stable.

When a bulk of the Indian population stays in the semi-urban and rural parts of the country, it is but important that such population is empowered to create larger demand in the economy. The Finance Minister in his budget speech acknowledging this mentioned that "we must rely on domestic demand and Indian markets to ensure that India's growth does not slow down". This statement remained the focus of this year's budget proposals.

In this direction, the government has proposed to increase its spend on rural infrastructure, healthcare and employment generation opportunities. Government has also expressed intent to rationalise the benefit transfers to the ultimate beneficiary by proposing to introduce a law to provide legal sanctity to Aadhar. These measures should provide the necessary impetus to the Indian market, which is expecting a fresh lease of life.

Looking into the tax proposals, this year we have had the highest number of amendments in the direct tax as well as the indirect tax laws. This clearly shows that the current tax laws needs significant changes with changing economic situations and business practices. The introduction of GST would have been more welcome and appropriate, which still looks a farther goal to achieve. Significant inputs have also been drawn from Justice Easwar committee which gave its recommendations on simplifications of Income tax Act. The tax proposals have also tried to provide a lot of promised tax incentives to Start-ups. Introduction of Country by Country reporting on Transfer Pricing goes on to show Government's commitment to adopt principles emanating from BEPS project of G20 countries.

The Government has also expressed its intent to address the long standing tax disputes with multinationals and provide thrust to Make in India. Contrary to this thinking, proposal to introduce an equalisation levy on consideration paid to a non-resident on certain services rendered comes as a surprise, which prima facie appears to be overriding the sovereign tax treaty signed by India with various countries.

Overall it is a forward and inward looking budget, which is the need of the hour. We only wish that the rural spend on various aspects that are proposed are executed efficiently without much political tug of wars and India emerges a stable and reliable economy.

Team Advith

Key budgetary highlights

- Growth of GDP accelerated to 7.6%
- Current Account Deficit (CAD) stood at 14.4 billion this year
- Foreign exchange reserves touched highest ever level of about 350 billion US dollars
- A host of proposals for the rural infrastructure, irrigation farm sector and other aspects to augment rural economic proposed.
- 100% FDI to be allowed through FIPB route in marketing of food products produced and manufactured in India
- Amendments in Companies Act to improve enabling environment for start-ups proposed
- Expansion in the scope of e-assessments to all assesseees in 7 mega cities in the coming years.
- Recapitalization of banks will be done during next financial year
- Work for passage of insolvency and bankruptcy laws, to undertake significant reforms.
- Fiscal deficit for FY 2016-'17 targeted at 3.5%.

Direct Tax Related Proposals

1. Individual Taxation

1.1. Tax Rates

- ▶ No change in individual slab rates for individual.
- ▶ Increase in **surcharge from 12% to 15%** for individuals having total income of more than Rs 1 cr.
- ▶ Rebate u/s 87A has been increased from Rs 3,000 to Rs 5,000 for taxpayers having taxable income upto Rs.5 lakhs

1.2. Retiral benefits and taxation

- ▶ 60% of accumulated balance of PF withdrawal for contributions made by employee on or after 1st April 2016 is taxable, other than excluded employees (to be notified). No such taxation existed earlier. Subsequent to the introduction, the proposal has been withdrawn by the Finance Minister as a response to wide spread criticism for the same.
- ▶ 40% of accumulated balance in **National Pension scheme** is proposed to be **exempt from taxation**. Earlier, the entire proceeds were subject to taxation.
- ▶ Annuity paid to nominee after the death of the NPS holder is proposed to be made tax free from AY 2017-18.
- ▶ Movements from other superannuation schemes to NPS are tax exempt.
- ▶ The amount of any contribution to **an approved superannuation fund** by the employer in respect of the employee to the extent it **exceeds Rs 1.5lakh is taxable** with the effect from 1st April 2017, the earlier limit was Rs.1 lakh.
- ▶ In case of any **dividend** received by individual, HUF or Firm, resident in India, in case the incomes included any dividend from a domestic company, the same is proposed to be **taxed at 10%** in addition to taxation of other income in a normal manner.

1.3. Income from House Property

- ▶ In computing income from house property, a deduction on interest paid on loan borrowed is allowed as a deduction. Time limit for **completion of construction** for availing such deduction is proposed to be **raised from 3 to 5yrs.**
- ▶ Unrealised rent and arrears of rent realized in later years is taxable irrespective of whether the recipient is the owner or not. 30% standard deduction available for such rent.
- ▶ Additional Interest is allowed as **deduction towards housing loan u/s 80EE**, if the following conditions are satisfied:
 - Loan is sanctioned between 1st April 2016 to 31st March 2017.
 - Loan sanctioned is not more than Rs.35lakhs.
 - Value of property is not more than Rs.50lakhs.
 - The home buyer does not own any other residential house property on the date of sanction of loan.
- ▶ The deduction available while computing income of a non salaried person towards payment of **rent of his residence** is proposed to be increased from **Rs 2,000 to Rs 5,000 per month.**

2. Corporate Taxation

- ▶ No change in corporate tax rate, except for companies who have turnover or gross receipt not exceeding **Rs.5 crores in FY 2014-15**, the tax rate proposed to be reduced to **29% for FY 2016-17**
- ▶ **Non compete fee for profession also chargeable to income tax** under the head “Profit and gains of business or profession”
- ▶ Payment to Indian railways for use of railway asset is allowable only on payment basis u/s 43B.

2.1. Moving towards lower tax rate and lesser tax incentives

- ▶ Deduction for **scientific research paid** to a research association to be reduced from **175% to 150%** from FY 2017-18. No weighted deduction beyond FY 2020-21.
- ▶ Contribution to company for **carrying out scientific research - No weighed deduction** from FY 2017-18
- ▶ Contribution to research association for carrying out **research in social science or statistical research - No weighted deduction** from FY 2017-18

- ▶ Weighted deductions for in house **research by Bio Technology Company or other company – restricted to 150% from 200%** from FY 2017-18. No weighted deduction beyond FY 2020-21.
- ▶ **Sunset clause introduced for SEZs** - SEZ to commence operations before 1st April 2021 to avail tax exemption u/s 10AA.
- ▶ **New regime of taxation for certain domestic companies** have been proposed from AY 2017-18 onwards u/s 115BA, subject to the following:
 - Company should be incorporated on or after 1st March 2016
 - Company is engaged in the business of manufacturing or production of article or thing
 - No special deductions/exemptions are claimed
 - No weighted depreciation is claimed
 - If the above are satisfied, the income shall be taxed at 25% at the option of the assessee

Such option is to be exercised in a prescribed manner before the tax return filing due date.

2.1.1. Corporate Tax rationalisation

- ▶ **Sec 115JB shall not be applicable to a foreign company w.e.f April 1, 2001** if - (i) assessee is a resident of a country or a specified territory with which India has an agreement referred to in Sec 90(1) or the Government has adopted any agreement u/s 90A(1) and the assessee does not have a PE in India in accordance with the provisions of such Agreement; or(ii) assessee is a resident of a country with which India does not have a DTAA and assessee is not required to seek registration under any law for the time being in force relating to companies. This is applicable wref from 1st April 2001

3. International Taxation

- ▶ Implementation of **POEM based residence rule deferred for 1 year** and applicable from FY 2016-17.
- ▶ **Country by country reporting introduced for TP reporting** for constituent entity belonging to an international group, showing the India's commitment towards BEPS project of G20 countries.
- ▶ **Exemption from income of foreign company from storage and sale of crude oil stored as part of strategic reserves** if such storage and sale is pursuant to a notified agreement entered into by Central Govt. / approved by Central Govt

4. TDS and Advance tax

▶ TDS limits raised

Particulars	From	To
Accumulated balance due to employee	30,000	50,000
Winning from Horse Race	10,000	15,000
Payment to Contractors	75,000	1,00,000
Sale on Lottery Tickets	1,000	15,000
Acquisition of certain immovable property	2,00,000	2,50,000

▶ TDS limits reduced

Particulars	From	To
Insurance Commission	20,000	15,000

▶ TDS rates reduced

Particulars	From	To
Life Insurance Policies	2%	1%
Sale of Lottery Tickets	10%	5%
National Saving Scheme	20%	10%

- ▶ **Form 15G/H** can also be given for **TDS on rent** w.e.f 01-06-2016
- ▶ **Mandatory holding of PAN for non residents** is proposed to be **done away with**, if certain conditions are fulfilled
- ▶ A **TCS at 1% on purchase of motor vehicles** exceeding Rs.10 lakhs has been proposed
A TCS off 1% is proposed to be added for sale of any goods or providing any service, if the consideration is received in cash, where the value exceeds Rs.2 lakhs. This is not applicable if the payer has subjected the payment to TDS.
- ▶ **Advance Tax due dates made 4 times** in a year for individuals, HUF & Firm on par with corporate tax payers. No liability of advance tax for assesses adopting 44AD.

5. Presumption Taxation and Audits

- ▶ **Presumptive taxation u/s 44AD** for business to be available for **turnover upto Rs.2 crores**. However no amendment in section 44AB.

- ▶ If 44AD adopted by business for a year and not adopted for any of the 5 years henceforth, such benefit of **presumptive taxation cannot be claimed for 5 years subsequent to the AY in which 44AD was not opted.**
- ▶ **Presumptive taxation for professionals at 50%** of the gross receipts available upto a turnover of Rs.50 lakhs – 44ADA. Consequently **Tax audit limit** for professionals has been increased from **Rs.25lakhs to Rs.50lakhs.**

6. Royalty Taxation

- ▶ A new taxation of royalty has been proposed. Whereby any royalty received by a person **resident** in India in respect of a **patent developed and registered in India** shall be **taxable on gross basis at 10%.**

7. Provisions relating to Real Estate Sector

- ▶ Tax incentive for eligible housing projects:
 - the project is approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March, 2019
 - the project is completed within a period of three years from the date of approval by the competent authority
 - the built-up area of the shops and other commercial establishments included in the housing project does not exceed three per cent. of the aggregate built-up area
 - the project is on a plot of land measuring not less than one thousand square metres where
 - such project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the area of twenty-five kilometres from the municipal limits of these cities, or two thousand square metres within the jurisdiction of any other municipality or cantonment board
 - the residential units comprised in the housing project does not exceed thirty square metres where such project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the area of twenty-five kilometres from the municipal limits of these cities, or sixty square metres, where such project is located within the jurisdiction of any other municipality or cantonment board
 - where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual

- If the above alongwith certain other conditions are satisfied, a deduction of an amount equal to hundred per cent. of the profits and gains derived from such business is proposed to be allowed

8. Equalisation Levy

- ▶ A very unique mode of taxation is proposed to be introduced for non resident for certain types of payment called 'Equalisation levy'. This tax has been proposed not as a part of the Income Tax Act. However as a part of the Finance Act itself. Prima facie looks like the levy might be applicable irrespective of double tax avoidance agreement.
- ▶ Equalisation levy means the tax leviable on consideration received or receivable for any specified service under the provisions of this chapter. Specified service defined to mean online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.
- ▶ Equalisation levy will be taxed at the rate of six per cent. of the amount of consideration for any specified service received or receivable by a person, being a non-resident from
 - a person resident in India and carrying on business or profession or
 - a non-resident having a permanent establishment in India.
 - ▶ However, in following cases Equalisation levy shall not be charged:-
 - The non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment.
 - The aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees. or
 - Where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.
- ▶ Payment of Equalisation levy and interest/penalty
 - Equalisation levy so deducted during any calendar month shall be paid by the assessee to the credit of the central government by the seventh day of the following said calendar month.
 - In case of delayed payment assessee shall pay simple interest at the rate of 1% of such levy for the every month or part of the month by which such crediting of the tax or any part thereof is delayed.

- Any assessee who fails to deduct such levy shall pay in addition to pay such levy and interest, a penalty equal to the amount of equalisation levy that he failed to deduct.
 - Any assessed who has deducted the equalisation levy but fails to pay such levy to the credit of the Central Government in addition to pay such levy and interest, a penalty of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of Equalisation levy that he failed to pay.
- ▶ Non deduction of equalization levy or non payment before the due date of filing returns to attract disallowance u/s 40(a)(ib). This is the only reference to equalisation levy under the Income Tax Act.

9. Tax Incentives

- ▶ Tax incentive for start-up u/s 80-IAC:
- New business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property is to be set up
 - It should be a company incorporated on or after 1st day of April, 2016 but before the 1st day of April, 2019
 - The total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021
 - It holds a certificate of eligible business from the Inter-Ministerial Board of Certification
 - It is not formed by spitting up or reconstruction of earlier business (subject to certain conditions)
 - If the above conditions are fulfilled, a deduction of an amount equal to one hundred per cent. of the profits and gains derived from such business for three consecutive assessment years shall be allowed, which can be used within the first 5 years of incorporation.
- ▶ Incentive for employment generation u/s 80JJAA:
- Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, **a deduction of an amount equal to 30% of additional employee cost** incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided, subject to the below:

- **No minimum number of increase in employment**, any increase qualifies for this benefit
- Salary emoluments should be **more than Rs.25,000 per month** (excluding contribution to pension, PF or any other fund)
- Minimum no. of days of employment is 240 days

10. Capital Gain Taxation

- ▶ Additional conditions for **exemption of conversion of Company into LLP** – value of the assets as appearing in the B/S for 3 preceding previous years cannot be more than 5 crores.
- ▶ **Gold Monetisation Scheme, 2015** included in list of capital assets.
- ▶ **Value as on date of agreement for sale** of immovable property to be considered as **full value of consideration** for section 50C, if the agreement date and registration date are different. This clause will apply only if the initial consideration was paid by banking modes.
- ▶ Inserts a new Sec 54EE to provide exemption from capital gains tax if Long Term Capital Gain (LTCG) proceeds are invested by an assessee in units of such specified fund, as may be notified by the Government in this behalf, subject to the condition that the amount remains invested for 3 years failing which the exemption shall be withdrawn. Investment in the units allowed up to Rs. 50 lakhs.
- ▶ Reinvestment of sale of LTCA into shares of start-up exempt from tax. The time limit for starting the new start up extended upto 31/03/2019. Eligible start up definition includes a service industry approved by inter ministerial board
- ▶ New reinvestment benefit for LTCG proposed u/s 54EE - Long Term Specified Asset which is yet to be notified. Maximum investment of Rs.50 lakhs in any financial year. Rs.50 lakhs also limit for year of sale and next year cumulatively.

11. Anti-avoidance provisions

- ▶ While computing tax on any income u/s 115BBE in the nature of undisclosed cash credits or investments, it is proposed to not allow any set off of losses.
- ▶ A new provision has been inserted which proposes to tax accreted income of a trust or institution if the same is converted/merged into an entity which is not eligible for registration as a tax exempt trust or has not transferred upon dissolution all the assets

into another entity which is eligible for such tax exempt trust registration.

- ▶ It is proposed to make it mandatory from AY 2017-18 to file tax returns for a assessee who has income in excess of basic exemption limit before claiming exemption from capital gain u/s 10(38).

12. Administrative Provision

- ▶ Electronic communication has also been made acceptable form of communication by the Assessing Officer.
- ▶ Time limit for filing belated returns has been reduced only till the end of relevant assessment year and not till end of the subsequent year. However, belated returns are also made available for rectification, which was not available earlier.
- ▶ While processing the return u/s 143(1) certain additional powers have been granted:
 - To disallow loss of a previous year, where the return was not filed within time
 - A disallowance reported in the audit report has not been considered in the tax return can be made in the intimation
 - To add additional income as reported in Form 26AS

Before making such an adjustment, intimation is to be served to the assessee and 30 days time is to be allowed. Processing of return u/s 143(1) is made mandatory even when notice u/s 143(2) is served.

- ▶ Time limit for carrying out assessments have been proposed to be revised, as under:

Sl. No.	Assessment	Proposed time limit
1	Assessment u/s 143(3)/144	Changed to 21 months from 2 years from end of AY
2	Reassessment u/s 147	Changed to 9 months from 1 years from end of FY in which notice u/s 148 issued
3	Order giving effect to ITAT order/ HC order /SC order or order u/s 263/264 where effect can be given wholly or partly without making a fresh assessment	3 months from the end of month in which relevant order is received or passed, as the case may be by Chief Commissioner/ Principal Commissioner /Principal Chief Commissioner

- ▶ Provisions related to Appeal by AO against DRP order deleted.

- ▶ Interest on refund u/s 244A
 - If return filed after the due date – interest on refund to be payable from the date of filing return
 - Interest on refund of self assessment tax- from date of filing return or payment of tax whichever is later.
 - For the purpose of determining the order of adjustment of payments received against the taxes due, the prepaid taxes i.e. the TDS, TCS and advance tax shall be adjusted first.
 - Further, additional interest of 3% would be payable where the refunds arise on account of appeal effect and there is delay in passing of order giving effect to appellate order beyond 3 months or beyond the period of extension granted by Commissioner or Principal Commissioner. In such cases, interest would be payable for the period from date following the date of expiry of 3 months or extended period as the case may be to the date on which the refund is granted

- ▶ Penalty for concealment of income etc. rationalized
 - Provisions of Sec 271 shall not apply to or in relation to assessments for FY 2016-17 and subsequent AYs
 - **New Section 270A – Penalty for under reporting and misreporting of income**
 - Power to the concerned officer to levy penalty on a person who has under reported his income has been provided by introduction of a new Section 270A.
 - The section provides for different scenarios in which under reporting of income are determined. Under reporting of income in most scenarios is the difference between income assessed during Assessment and returned income.
 - Where the officer is satisfied that the explanation of the assessee is bonafide and he has disclosed all material facts, if income is determined on estimate basis, addition made to Arm's Length Price by TPO when all documents are required documents are maintained by assessee are few cases where assessed income will not be considered as under reporting.
 - The penalty shall be equal to 50% of the amount of tax payable on under reported income.
 - Where under reporting is due to misreporting of income the penalty shall be 200% of the amount of tax payable on under reported income. Cases which amount to misreporting have been illustrated in the Sec-

tion. Some of which include misrepresentation or suppression of facts, failure to record investments in books of accounts and failure to report an international transaction.

13. THE INCOME DECLARATION SCHEME, 2016

- ▶ Scheme to be effective from 1st June 2016
- ▶ In case any tax payer has:
 - Not filed his tax return
 - Has not disclosed certain incomes
 - Has omitted to disclose certain incomes in the return can make the declaration before a date that is to be notified by the Government. Form and manner the declaration will be notified.
- ▶ Tax at 30%, Krishi Kalyan surcharge at 7.5% and penalty at 7.5% is payable alongwith such declaration
- ▶ Case cannot be reopened for declaration made the this scheme

14. THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

- ▶ Scheme to be effective from 1st June 2016
- ▶ If dispute relates to tax demands:
 - The applying tax payer to pay disputed tax + interest till the date of assessment order, if the dispute tax does not exceed Rs.10 lakhs
 - If more than Rs.10 lakhs, disputed tax + interest till the date of assessment order + penalty of 25%
- ▶ If the dispute relates to penalty, disputed tax + interest till the date of assessment order + penalty of 25%
- ▶ If the above payments are made and pending appeals to be withdrawn, no further appeal proceedings to continue
- ▶ Prosecution proceedings not to be launched against the person making the said declaration.

INDIRECT TAX PROPOSALS

[Note: Effective dates for changes in below indirect tax proposals vary. Generally, changes relating to rate of customs and central excise are effective immediately, while changes vide Finance Bill are effective only after its enactment. Changes to service tax laws may be immediate or w.e.f. 1-4-2016 (such as changes to CENVAT Credit Rules) or 1-6-2016 (such as taxation of stage contracts). It is suggested that the reader examines the effective date on case to case basis].

1. Customs

- ▶ Time limit for notice extended from 1 year to 2 years.
- ▶ Exemption to drawings, plans and designs imported on media of paper (chapter 49) is withdrawn – such goods now taxable at 10% BCD.
- ▶ Basic Customs duty on imitation jewellery [7113] is being increased from 10% to 15%; Concessional CVD on Gold dore bar is being increased from 8% to 8.75%; Concessional CVD on Silver dore bar is being increased from 7% to 7.75%.
- ▶ Several goods of chapter 84 and 85 increased from 7.50% to 10% including monitors, projectors, etc.
- ▶ Basic Customs Duty and Excise Duty [and thus CVD] are being exempted on parts, components and accessories for use in the manufacture of Routers, broadband Modems, Set-top boxes for gaining access to internet, set top boxes for TV, digital video recorder (DVR) / network video recorder (NVR), CCTV camera / IP camera, lithium ion battery [other than those for mobile handsets].
- ▶ Basic Customs Duty exemption on E-Readers [8543] is being withdrawn. They will now attract BCD of 7.5%. Basic Customs duty on parts and raw material for manufacture of E-readers is being reduced to 5% subject to actual user condition.

2. Central excise

- ▶ Time limit for notice (other than extended period) increased from 1 year to 2 years.
- ▶ Infrastructure cess on specified motor vehicles at 1% to 4%. Exempt for ambulances, electric vehicles, three wheelers, etc. Considering that it is a duty of excise, it should be applicable on imports as well, along with CVD. This cess shall be outside the CENVAT chain.
- ▶ Ready mix concrete (3824 50 10) manufactured at site is being exempted from duty;
- ▶ Abatement for all footwear increased from 25% to 30% (i.e. 70% of MRP is the taxable value);
- ▶ Option of 4% without credit or 12.50% with credit given for Consumer Premise Equipments such as set-top boxes, routers, broadband modems, CCTV, etc.

2.1. Jewellery :

- ▶ Taxable at 1% without credit or 12.50% with credit on articles of jewellery [excluding silver jewellery, other than studded with diamonds/other precious stones];
- ▶ Higher SSI exemption limit of Rs. 6 crore and eligibility limit of Rs. 12 crores (CA certificate for meeting the limits shall suffice);
- ▶ For the month of March 2016 prorata limit of Rs. 50 lakhs shall apply subject to eligibility limits;
- ▶ Centralised registration option is provided for manufacturers who have centralized billing or accounting system;
- ▶ Thrust of the new levy shall be voluntary compliance and departmental interference shall be minimal as per instructions of TRU (Tax Research Unit of CBEC).

2.2. Readymade garments :

- ▶ Tariff value increased to 60%
- ▶ Now taxable for those bearing a brand name or sold under a brand name and having a retail sale price (RSP) of Rs. 1000 and above – optional at 2% (without CENVAT) or 12.50% (with CENVAT);
- ▶ The provisions as applicable during introduction of levy in 2011 is equally applicable currently, including payment of duty by brand name owner or on

their authorization to be paid by job-worker;

- ▶ The SSI exemption for the month of March, 2016 will be Rs.12.5 lakh (prorata of Rs. 150 lakhs) subject to domestic turnover for previous year did not exceed Rs. 4 crores (CA certificate can be furnished in this regard);
- ▶ Taxability of this sector can now broadly be categorized as under :

Category	Central excise rate
Readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310 of retail sale price (RSP) of Rs.1000 and above when they bear or are sold under a brand name	Optional 2% (without CENVAT) or 12.50% (with CENVAT)
Readymade garments and made up articles of textiles other than those mentioned above - garments / articles of cotton, not containing any other textile material	Nil (without CENVAT) or 6% (with CENVAT)
Readymade garments and made up articles of textiles other than those mentioned above - garments / articles other than cotton	Nil (without CENVAT) or 12.50% (with CENVAT)

2.3. Software :

- ▶ Software imported / manufactured on media other than those on which MRP is required to be disclosed is exempted from CVD / central excise to the extent of such value if service tax is paid on the same;
- ▶ Declaration to be filed in format prescribed;
- ▶ Provision for self-declaration of value of exemption claimed (this aspect of valuation was unclear earlier);
- ▶ As a corollary, service tax on media is exempted on software imported / manufactured on which MRP is required to be disclosed subject to appropriate duties being paid and invoice mentioning that “no amount in excess of the retail sale price declared on such media has been recovered from the customer”.
- ▶ The above mutual-exclusivity was distorted upon introduction of negative list and hence the clear demarcation of levy and avoidance of double taxable is a welcome step.

3. Service tax

- ▶ Krishi Kalyan cess – 0.50% of value of taxable services effective from 1-6-2016 upon being notified (effective rate can go upto 15%).
- ▶ Normal time limit for issuance of notice increased from 18 months to 30 months (other than cases where extended period is invoked).
- ▶ Prosecution limit extended from Rs. 50 lakhs to Rs. 200 lakhs of demands.
- ▶ Interest rate rationalized to 15% p.a. except in cases where service tax is collected but not deposited where rate shall be 24% p.a.
- ▶ Rebate provisions retrospectively amended to include certain services.
- ▶ Annual Information Return envisaged – applicability and formats as and when notified.
- ▶ 11 new CESTAT benches are proposed to be introduced.
- ▶ Stage carriage removed from negative list and to be taxable (exemption available to non-AC stage carriage). AC stage carriage to be taxed after abatement of 60% (i.e. on 40% value).
- ▶ Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is now a declared service – double taxation of service tax and VAT cannot be ruled out in these cases (as in the case of software).
- ▶ Services by a senior advocate to a firm or business entity are now taxable under forward charge.
- ▶ Tour operator service abatements are restricted to two categories:
 - (a) Only accommodation booking services: Abatement of 90%, Taxable at 10% of the value
 - (b) All other services: Abatement of 70% and taxable at 30% of the value
- ▶ Specified services of IIM rendered to students are exempt (does not include executive development programmes). It is clarified in TRU letter that no liability exists for these courses for the past period as well.
- ▶ Services provided to government, local authority for construction, repair, erection, etc. of civil structure, educational / clinical / art structure or residential complexes were made taxable from 1-4-2015. However exemption is now provided for those contracts which were entered into before 1-4-2015 on which appropriate stamp duty is paid for services rendered as per said contract after such date but till 1-4-2020. Similar provision introduced construction of airports and ports. Refund claim for taxes already paid is to be filed within 6 months from date on which Finance Bill is passed.

- ▶ Services provided to government, local authority for construction, commissioning of original works for railways, including monorail or metro is now taxable. However, services rendered vide contracts entered into before 1-4-2016 on which stamp duty is paid shall remain exempt.
- ▶ Considering that all government services are taxable from 1-4-2016, the following specific exemptions are provided :
 - Services provided by Employees" Provident Fund Organisation (EPFO) to persons governed under the Employees" Provident Funds and Miscellaneous Provisions Act, 1952;
 - Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999;
 - Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market;
 - Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination;
 - The services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India is being exempted from service tax;
 - Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees are being exempted from service tax.
- ▶ **Reverse charge :**
 - Services of senior advocates are now taxable under forward charge.
 - AMC of mutual funds were liable to pay service tax on reverse charge for services received from agents / distributors – now brought under forward charge;
 - Government services – all services are now under reverse charge and not just support services. It may be noted that all services by government other than those specifically exempted / covered by negative list were made taxable vide Union Budget 2015 (prior to that, only support services by government were taxable). However, the effective date of the said amendment was recently notified as 1-4-2016. Care to be taken to identify if any service (quid-pro-quo) is received from government on payment of any fees, charges, levies, etc.

- ▶ Quarterly payment and payment on receipt basis (if service turnover is less than Rs. 50 lakhs) which was available to individuals and firms is now made available to One Person Companies and HUFs as well.
- ▶ **Refund of CENVAT credit:** Time limit of 1 year for refund claims to be filed under rule 5 is clarified to begin from date of receipt (or date of invoice in case of advance). Not clear as to treatment in case of partial time barred cases. Furthermore, time limit inserted in notification which not present in rule 5, can be questioned as being in excess of authority.

4. CENVAT Credit

- ▶ Shipments through vessel from customs station to place outside India is made zero rated (not covered under exempted service).
- ▶ Capital goods below Rs. 10,000 per piece treated as inputs.
- ▶ Service tax paid on assignment of natural resources (spectrum) – credit to be availed pro-rata on period of license.
- ▶ Rule 6(3) –
 - If option of paying tax on value of exempted goods / services is chosen, total payment shall not be in excess of total credit taken.
 - Specifically used for exempted purposes is disallowed fully (was applicable earlier as well) and specifically used for non-exempted purposes is allowed fully (which is new assessee friendly provision) – only on the balance credit, proportionate ratio to be used;
 - Excess input if any on finalization of ratio – credit to be availed at end of same financial year (may be practically difficult since books shall not be finalized);
 - For 2015-2016, old provisions shall apply.
 - Rule 6(3B) – banks given option to use rule 6 3(i)/(ii)/(iii) apart from 50% credit (disputable if value of exempted services excludes interest or not, since explanation is applicable for rule 6(3) and 6(3A) only).
 - Rule 6(4) – capital goods used exclusively for exempted goods / services – credit not available only if exclusively used for first 2 years for exempted purposes (earlier provisions were silent on capital goods used commonly for exempted and taxable purposes).

- Assessee who have not filed prior intimation may be allowed by assessing officer to follow proportionate method subject to payment of interest at 15% p.a.
- ▶ Input Service Distributor / warehouse :
 - Can also transfer to outsourced manufacturing unit;
 - Outsourced manufacturing unit –
 - Where non-MRP goods, payment u/r 10A, hence inputs to be supplied by principle manufacturer;
 - Where MRP goods – manufactured under brand name of principle manufacturer.
 - Warehouse to act as first stage / second stage dealer;
 - Disputable whether outsourced manufacturing unit includes units manufacturing exempted goods, especially since it is clarified that rule 6 should apply post distribution of credits to respective units.
- ▶ The existing prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub-rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit. This is a welcome step considering that interest is not applicable on credit availed but not utilized.

5. IDT dispute resolution scheme

- ▶ For cases pending at Commissioner (A) – tax plus interest and 25% penalty. Cases should be pending as on 1 March 2016 and declaration to be filed with 31 December 2016.

Analysis of Key Proposals in Finance Bill 2016

***Disclaimer:** The content of this alert is intended solely for the purpose of information. This should not be treated as a technical tax advice for making decisions. You would have to contact your tax advisor to seek specific applicability of the contents of the alert for your case. We bear no responsibility of any loss occasioned to any person acting or refraining from action as a result any material in this alert.*

Budget Panorama 2016



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