

UNION BUDGET

2015 - 16



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PREFACE

Dear Reader,

We are happy to present to you the 5th Edition of our compilation on the Union Budget. The compilation summarizes the relevant amendments in relation to Direct and Indirect Taxes proposed by Budget 2015. It covers the proposed amendments that are relevant to the scope of our services. It also attempts to help you acquaint yourself with the major tax reforms in the year to come.

The compilation contains 4 parts. Each of the said parts has its own executive summary for your ready reference.

Budget 2015 will be remembered as a 'pragmatic budget'. A budget essentially is an account of public expenditure, the Indian budget is looked at as an indication of the pace and direction of the Indian economy. With the emphasis on sharing large revenues with the States, one can hope for a much larger Centre-State co-ordination. For the first time, a definitive deadline has been announced for introduction of GST while the DTC seems to have been shown the door.

A sincere attempt has been made to provide clear and accurate information. We request you to treat the matters herein contained for discussion purposes only. Before acting on any of the said information, we request you take due professional advice as it is very difficult to provide detailed pros and cons in a short synopsis like this. Also, if the need arises we will be happy to share with you a soft copy of this Budget compilation.

Your feedbacks have kept us on our toes, so please let them keep coming. We hope this compilation adds some value to you and your commercial ventures. With this we wish you the very best in your business dealings of 2015-16.

Thanking You,
CA.Ashwin K.Shah

ABOUT US

Ashwin K.Shah & Co., Chartered Accounts, headed by CA.Ashwin K.Shah, is the flagship concern of our professional practice. It has been around since August 1979. With the beginning of the 4th decade, it continues to tread forward and do more satisfying work in the Direct tax field. The concern mainly provides direct tax compliance and advisory services. It also handles the legal drafting services and arbitration services for family settlements.

Ashwin Shah & Associates, Chartered Accountants, is in its 23rd year of practice. The firm is managed by CA.Shrenik A.Shah, Partner, with the able guidance of his senior partner, CA.Ashwin K.Shah. The firm handles the indirect tax and auditing practice. The firm provides compliance & consultancy services under VAT, Service Tax & allied laws, broking house incorporation, compliance, NBFC incorporation & compliance & process management services and auditing services under various statutes.

The industry interface of the firms include businesses like manufacturing of engineering items & consumer goods, stock broking, ship management services, banking companies, trading of industrial goods & hardware, etc.

CAUTION NOTE

This compilation has been put together to provide clarity to our clients & associates on the changes proposed by Budget 2015. It is not intended to advertise or publicise the firms or the services rendered in any way.

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1. Rates of Income Tax

1.1 In the case of Non-Corporate Assessee Other than Firms/LLPs/Co-operative Societies

1.1.1 Basic Slab Rates

For Resident Individuals (Other than Senior Citizen) / HUF/ AOP/ BOI/AJP like Trusts

Taxable Incomes	AY 2016- 2017 (01.04.2015 to 31.03.2016)	AY 2015- 2016 (01.04.2014 to 31.03.2015)
0 – 250000	NIL	NIL
250001 – 500000	10%	10%
500001 – 1000000	20%	20%
1000001 +	30%	30%

For Resident Individuals (being Senior Citizen Assesseees >=60 Years < 80 Years)

Taxable Incomes	AY 2016- 2017 (01.04.2015 to 31.03.2016)	AY 2015- 2016 (01.04.2014 to 31.03.2015)
	>=60 years	>=60 years
0 – 300000	NIL	NIL
30001 – 500000	10%	10%
500001 – 1000000	20%	20%
1000001 +	30%	30%

For Resident Individuals (being Very Senior Citizen Assesseees >= 80 years)

Taxable Incomes	AY 2016- 2017 (01.04.2015 to 31.03.2016)	AY 2015- 2016 (01.04.2014 to 31.03.2015)
0 – 500000	NIL	NIL
500001 – 1000000	20%	20%
1000001 +	30%	30%

1.1.2 Surcharge on Income Tax (Super Rich Tax)

The above Income Tax shall be increased by a surcharge of 12% of Tax from previous rate of 10% for persons whose total taxable income exceeds Rs. 1 Crore.

1.1.3 Education Cess

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The above income tax and surcharge (where ever applicable) shall be increased (in every case) by an education cess @ 2% of and higher secondary cess @ 1% of income tax.

1.2 In the case of Firms & LLPs

Taxable Incomes	AY 2016- 2017 (01.04.2015 to 31.03.2016)	AY 2015- 2016 (01.04.2014 to 31.03.2015)
Where total income < 1 Crore	30% + 3% Cess = 30.90%	30% + 3% Cess = 30.90%
Where total income > 1 Crore	30% + 12% SC + 3% Cess = 34.608%	30% + 10%SC+3% Cess = 33.99%

1.3 In the case of Co-operative Societies

a. With Total Taxable Income of less than or equal to Rs.1 Crore

Taxable Incomes	AY 2016- 2017 (01.04.2015 to 31.03.2016)	AY 2015- 2016 (01.04.2014 to 31.03.2015)
0 – 10000	10%	10%
10001 - 20000	20%	20%
Above 20000	30%	30%

Tax computed as above shall be increased by Cess @ 3%.

b. With Total Taxable Income of more than Rs.1 Crore

On the income tax computed as per (a) above there will be added a Surcharge of 10% on such income tax. The income tax derived after such addition will be further increased by Cess @ 3%. So for example if a co-operative society has got total taxable income of Rs.1,05,00,000/-. The tax thereon will be computed as under:

Taxable Incomes	Tax Rate	Tax Payable
0 – 10000	10% of 1st 10,000	1,000
10001 - 20000	20% of Second 10,000	2,000
Above 20,000	30% of balance	31,44,000
Net Tax		31,47,000
Add: Surcharge @ 10%		3,14,700
Add: Cess @ 3%		1,03,851

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Total Tax Payable	35,65,551
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1.4 In the case of Domestic Companies

Taxable Incomes	AY 2016-2017 (01.04.2015 to 31.03.2016)				AY 2015-2016 (01.04.2014 to 31.03.2015)			
	Tax	Sur	Cess	Total	Tax	S/c	Cess	Total
Where Total income upto 1 Crore	30%	0%	3%	30.90%	30%	0%	3%	30.90%
Where Total income > 1 Crore up to 10 Crore	30%	7%	3%	33.063%	30%	5%	3%	32.45%
Where Total income > 10 Crores	30%	12%	3%	34.608%	30%	10%	3%	33.99%

It is proposed to increase the rate of surcharge at the rate of 7% on domestic companies having income between 1 Crore to 10 Crore and at the rate of 12% on companies with annual income of Rs.10crore or more.

1.5 In the case of Companies Other Than Domestic Companies

Taxable Incomes	AY 2016-2017 (01.04.2015 to 31.03.2016)		AY 2015-2016 (01.04.2014 to 31.03.2015)	
	Royalties & Fees For Technical Services	Any Other Business	Royalties & Fees For Technical Services	Any Other Business
Where total income < 1 Crore	50% + 3% Cess = 51.50%	40% + 3% Cess = 41.20%	50% + 3% Cess = 51.50%	40% + 3% Cess = 41.20%
Where total	50% + 2%	40% + 2%	50% + 2%	40% + 2%

Taxable Incomes	AY 2016-2017 (01.04.2015 to 31.03.2016)		AY 2015-2016 (01.04.2014 to 31.03.2015)	
	Royalties & Fees For Technical Services	Any Other Business	Royalties & Fees For Technical Services	Any Other Business
income > 1 Crore up to 10 Crore	SC+ 3% Cess = 52.53%	SC + 3% Cess = 42.02%	SC + 3% Cess = 52.53%	SC + 3% Cess = 42.02%
Where total income > 10 Crores	50% + 5% SC + 3% Cess = 54.075%	40% + 5% SC + 3% Cess = 43.26%	50% + 2% SC + 3% Cess = 52.53%	40% + 2% SC + 3% Cess = 42.02%

2. Amendments relating to Salary Income

2.1 Transport allowance exemption doubled

Earlier deduction from salary in respect of Transport allowance was allowed upto Rs.800 per month which is now doubled to Rs.1,600 per month w.e.f Assessment Year 2016-17 onwards (Financial Year 2015-16). Rule 2BB of the Income Tax Rules, 1962 stands suitably amended to that extent.

3. Amendments relating to Income from Business & Profession

3.1 Rationalisation of the provisions relating to additional depreciation on manufacturing plant and machinery

(W.e.f Assessment Year 2016-2017)

- a. Additional depreciation @ 20% is allowed on new plant and machinery installed by a manufacturing unit or a unit engaged in generation and distribution of power. However, if the asset is installed after 30th September of the previous year only 10% of the additional depreciation is allowed. It is proposed to allow the remaining 10% of the additional depreciation in the subsequent previous year.
- b. It is proposed that in case the investments are made in plant and machinery in any notified backward areas in the

State of Andhra Pradesh and the State of Telangana additional depreciation of 35% will be allowed as against 20% that is generally allowed as stated above.

3.2 Additional Investment Allowance

It is proposed to insert a new section 32AD in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if the conditions/restrictions that are being prescribed are as under:

- a. The asset so acquired is meant for use in the manufacture of any article or thing
- b. The asset is acquired by an undertaking of an assessee that is set up in any notified backward areas of Andhra Pradesh & Telangana
- c. The asset so purchased is acquired & installed on or after 01.04.2015 but before 31.03.2020

In the absence of any restrictive provisions, the deduction shall be over and above the deductions that are being allowed under section 32AC of the Act, pertaining to investment allowance for investment in new manufacturing assets of a value that is in excess of Rs.25 Crores, subject to meeting the definition of the term “New Asset” as mentioned under Section 32AC.

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2016-17 onwards.

3.3 Amendments in Tax on Royalties and Fees for technical services (FTS) [S. 115-A]

Section 115A of the Income Tax Act, 1961 provides for taxation of income of a non-resident by way of Royalties/ FTS under an agreement entered after 31-03-1976. The proposed amendment is made to override the rate of tax of 25.75% (including Cess @ 3%) introduced in Finance Bill 2013 by reducing it to 10.3% (including Cess @ 3%) **w.e.f. 01-04-2015 (AY 2016-17)**.

However, the lower rate of tax withholding provided by the above amendment shall be subject to the PAN requirements as provided for under section 206AA of the Income Tax Act.

3.4 Amendments to MAT Provisions for income from AOP & Capital Gains by FIIs

Minimum alternate tax (MAT) is chargeable on Book Profits as computed in the manner prescribed by Section 115JB.

The computation of the book profits is being amended to a limited extent.

- a. In the case of a Company that has any share of income from an AOP (association of persons) &/or has any share in expenses thereof, the said expenses and incomes shall not be considered for computing the Company's book profits;
- b. In the case of a FII (foreign institutional investor) that has any income arising under the head capital gains arising from STT based transactions in securities in accordance with the relevant SEBI regulations, the said incomes and the entailing expenses shall not be considered for computing the Company's book profits.

3.5 Insertion of new section 9A dealing with certain activities not to constitute business connection in India

In the case of off-shore funds, under the existing provisions, the presence of a fund manager in India may create sufficient nexus of the off-shore fund with India and may constitute a business connection in India even though the fund manager may be an independent person. Similarly, if the fund manager located in India undertakes fund management activity in respect of investments outside India for an off-shore fund, the profits made by the fund from such investments may be liable to tax in India due to the location of fund manager in India and attribution of such profits to the activity of the fund manager undertaken on behalf of the off-shore fund. Therefore, apart from taxation of income received by the fund manager as fees for fund management activity, income of off-shore fund from investments made in countries outside India may also get taxed in India due to such fund management activity undertaken in, and from, India constituting a business connection. Further, presence of the fund manager under certain circumstances may lead to the off shore fund being held

to be resident in India on the basis of its control and management being in India.

In order to avoid such unnecessary taxation consequences in India in respect of Income from offshore investments & to facilitate location of fund managers of off-shore funds in India a specific regime has been proposed in the Act in line with international best practices with the objective that, subject to fulfillment of certain conditions by the fund and the fund manager.

- (i) The tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of Fund manager located in India; and
- (ii) That income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments has been undertaken through a fund manager located in India.

Notwithstanding anything contained in section 9 and subject to the provisions of this section, in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund.

The eligible investment fund, means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfills the following conditions, namely:—

- a. The fund is not a person resident in India;
- b. The fund is a resident of a country or a specified territory with which an agreement, being a tax treaty (also known as DTAA), referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into;
- c. The aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent. of the corpus of the fund;
- d. The fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

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- e. The fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;
- f. Any member of the fund along with connected persons shall not have any participation Interest, directly or indirectly, in the fund exceeding ten percent
- g. The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty percent
- h. The fund shall not invest more than twenty percent of its corpus in any entity;
- i. The fund shall not make any investment in its associate entity;
- j. The monthly average of the corpus of the fund shall not be less than one hundred crore rupees;
- k. Provided that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year;
- l. The fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;
- m. The fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;
- n. The remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity

The eligibility of a fund manager, in respect of eligible fund investment fund, means any person who is engaged in activity of fund management & fulfills the following conditions namely :-

- a. The person is not an employee of the eligible investment fund or a connected person of the fund,
- b. The person is registered as a fund manager or an investment advisor in accordance with the SEBI regulations in this regards;
- c. The person is acting in the ordinary course of his business as a fund manager,
- d. The person along with his connected persons shall not be entitled, directly or indirectly, to more than twenty per cent of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager;

In addition to the above, an eligible investment fund referred to above shall be required to file a statement every 90 days in the prescribed manner & form confirming thereby that it continues to remain so eligible.

It is pertinent to note that this provision is not providing any exemption to the part or whole of the income of the eligible investment fund that in any case is liable to Indian Income Tax. These provisions are only providing a much needed shield to the eligible investment fund's income accruing or arising outside India where such incomes have arisen on account of investment decisions by fund managers located in India.

4. Deemed Income in the hands of a non-resident entity clarified

Amendments will be effective from 01.04.2015 (AY 2016-17)

Income from a property or an asset or a capital asset situated in India is deemed to accrue or arise in India. A share or interest in a non-resident entity is deemed to be situated in India where such share or interest derives its value substantially from an asset (whether tangible or intangible) that is situated in India.

So for example if ABC PLC, UK holds shares in XYZ Pvt Ltd, an Indian Company, where XYZ owns a large land bank in India. The shares of ABC PLC, UK have substantial value owing largely to its investment in XYZ India. In its turn ABC, UK transfers its shares to PQR PLC, UK. The question that arose is whether such transfer of the shares of ABC PLC, UK to PQR PLC, UK outside India will attract an Indian Tax.

In order to provide more clarity and objectivity in dealing with such transactions, it is proposed to clarify that a share or interest in a non-resident entity is said to draw substantial value from an asset situated in India where:

- a. The value of the asset in India, valued in the prescribed manner, exceeds Rs.10 crores; and
- b. That such value represents 50% or more of the total value of assets, computed in the prescribed manner, of the said non-resident entity.

On the other hand it is also proposed to clarify that no income will arise in the hands of a non-resident entity from transfer of

shares or other interest in such entity to another non-resident entity where:

- a. The asset in India as referred to above is directly or indirectly owned by such non-resident entity; and
- b. The transferor of such asset, neither directly nor indirectly, holds more than 5% of the total voting power or share capital or other interest in the said non-resident Company or entity for a period of more than 12 months prior to the date of such transfer;

It is also proposed to be clarified that in case other than the one stated in para 4 above, the income attributable to & as is deemed to accrue or arise in India shall be restricted to the value of the assets located in India as computed in the prescribed manner.

At times it may also happen that the said foreign Company amalgamates or demerges into another foreign Company. In such cases, a concession from capital gains tax has been proposed under the Act. The transfer of shares of the said foreign Company under such scheme of amalgamation or demerger will not amount to transfer of a capital asset for the purpose of capital gains where:

- a. Atleast 25% of the existing shareholders of the non-resident entity become the shareholders of the amalgamated non-resident entity;
- b. Atleast 75% of the existing shareholders of the non-resident entity become the shareholders of the demerged non-resident entity;
- c. Such transfer under the scheme of amalgamation or demerger does not attract capital gains tax in the country in which such foreign Company is incorporated or is resident in.

Provisions in form of Explanation 6 & 7 to Section 9(1)(i) & section 47 (vi ab) & (vi cc) are being introduced to give effect to the above proposals.

5. Amendments relating to Public Charitable Trusts

Amendments will be effective from 01.04.2015 (AY 2016-17)

5.1 Yoga included in definition of charitable purpose

It is proposed to include 'Yoga' as part of charitable purposes. In that sense a Not for Profit Organisation that is engaged in

the provision of any activities relating to Yoga are proposed as carrying on a charitable activity.

5.2 Rationalisation of business activities vis-a-vis charitable purposes

At the moment, Trusts that are engaged in the carrying on of any activity in the nature of trade or commerce for a fee or other consideration are deemed as not carrying on a charitable activity to the extent of such business or venture.

It is proposed that in case where the Trust is able to fulfill the following conditions, the Trust will not be deemed to have carried on any business activities:

- a. The activity in question is carried on in the course of fulfillment of the Trust's charitable objects; and
- b. The aggregate receipts from such activity during the relevant previous year do not exceed 20% of the gross receipts of the Trust for the said previous year.

5.3 Procedural changes in exercise of options for deferment of expenses for charitable purposes

There are times when the Trust is unable to spend the prescribed sums of 85% within the same previous year. The Act envisages non-receipt of income, accumulation for future expenditure, etc. as reasons for such shortfalls. In order that such shortages are not treated as the incomes of the Trust liable to tax, the Trusts are given an opportunity to exercise an Option of making good these shortages in the succeeding previous years by way of a written option letter on or before the due date of filing the income tax return by the Trust.

It is proposed that the exercising of the said options are proposed to be subject to the following additional prescriptions:

- a. A new form is being prescribed for exercising such options;
- b. The option of income accumulation for future use by a Trust shall be restricted to a period not exceeding 5 years as against 10 years at the moment unless the project or activity for which such funds have been set apart is subject to any injunction or order by the Court. In case of such injunction or order, the period covered by such a pronouncement will be excluded for the purpose of computing the period of 5 years;

- c. In case of exercise of option of income accumulation for future use, the exercising of such option will be invalidated where the Trust exercising the option has not filed its return of income on or before the due date of filing the income tax return by the Trust.

Provisions of section 11(1), 11(2) & 13 are being suitably amended.

6. Exemption from Capital Gains on Consolidation of MFs

At present transfer of shares for new shares in the amalgamated or demerged Company by a shareholder under a scheme of amalgamation or merger does not amount to a transfer of capital asset, subject to conditions, & hence, such transfer is not liable to capital gains tax.

A similar provision is now being proposed in the case of consolidation of Mutual Funds. Under the proposed provisions, transfer of unit(s) of MFs by a unit holder against receipt of fresh units of the consolidated MF shall not amount to a transfer. The said transfer will not amount to a switch in and switch out as is the matter at the moment. The proposed provisions have envisaged a consolidation as being a consolidation of 2 or more equity oriented funds or 2 or more funds not being equity funds.

7. Exemptions & Deductions

7.1 Exemption for investment in relation to a girl child

In order to give an impetus to the education & well being of the girl child it is proposed to provide an exemption in relation to interest income or principal repayment arising from contribution made into an account opened in accordance with the Sukanaya Samridhi Account Rules, 2014.

The said contribution is being touted as being another form of PPF scheme. The salient features of the said scheme are as under:

- a. A legal guardian of the girl child will be permitted to contribute as little as Rs.1000 to a maximum of Rs.1,50,000 into the scheme every year;
- b. The account will be opened in the name of the girl child;
- c. The said legal guardian can open a maximum of 2 such accounts in the name of 2 different girl child;

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- d. The age of the girl child in whose name the account is opened must not be more than 10 years of age. A concession for a girl child on or after 2.12.2003 but before 1.12.2004 has been given where the account opening is concluded on or before 1.12.2015;
- e. Interest at the rate of 9.1% pa will be paid on the balances;
- f. 50% of the amounts in the account will remain locked till the girl child turns 18yrs of age;
- g. The account can be closed after the girl child attains 21 years of age;
- h. At the option of the girl child the account can be continued beyond 21 years of her age without any additional contribution. The balances will continue to earn interest @ 9.1% pa;
- i. The account will be allowed to be closed between the age of 18 to 21 of the girl child where the girl child gets married in the interim. Nevertheless, the closure will be treated as if it were a premature closure of account;
- j. A dormant account can be revived with a mere penalty of rs.50 & minimum contribution of Rs.1000.

Contribution to this account by a legal guardian is being allowed u/s.80C as part of the overall ceiling of Rs.1,50,000/-

Section 10(11A) is being introduced w.e.f. 01.04.2015 (AY 2016-17) to provide for the exemption as stated above.

7.2. Amendments relating to Deductions under Chapter VIA

- a. Amendments to provisions relating to exemptions from income tax and deductions under chapter VIA of the Act have been tabulated here under:

Section Ref	Basis of Deductions	Proposed Deduction (Rs.)	Existing Allowability
80CCC	Deduction to an individual for contributions made to certain Pension Funds	1,50,000/- ¹	1,00,000/-
Sec	Deduction to an	1,50,000/- ¹	1,00,000/-

¹ Deduction u/s.80C, 80CCC & 80CCD shall not exceed Rs.150000/-

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Section Ref	Basis of Deductions	Proposed Deduction (Rs.)	Existing Allowability
80CCD	individual in respect of contribution to pension scheme of Central Govt	Additional Rs.50,000/- shall be allowed on contributions made to New Pension Scheme.	
Sec 80D	<p>Deduction to an individual or HUF for contributions made towards Health Schemes</p> <p>Premium Payments: (Including 5,000/- for health checkup)</p> <p>When paid for self being a non-senior citizen for self or spouse &/or child</p> <p>When paid for self being a senior or very senior citizen</p> <p>When amount incurred on medical expenditure by very senior citizen(>=80years of age in previous year)</p>	<p>25,000/-</p> <p>30,000/-</p> <p>30,000/-</p>	<p>15,000/-</p> <p>20,000/-</p> <p>N I L</p>
Sec 80DD	Deduction to an individual or HUF in respect of maintenance		

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Section Ref	Basis of Deductions	Proposed Deduction (Rs.)	Existing Allowability
	including medical treatment of a dependent who is person with disability - For person suffering from disability	75,000/-	50,000/-
	For person suffering from severe disability	1,25,000/-	1,00,000/-
Sec 80DDB²	Deductions in respect of medical treatment for prescribed diseases & ailments (being chronic and protracted diseases) Where such payments are made for a very senior citizen or by very senior citizen for himself/herself	80,000/-	40,000
Sec 80U	Deduction to an individual in respect medical expenses where such individual suffers from disability For person	75,000	50,000

² The first proviso of section 80DDB has been amended to permit a medical certification from a specialist who may or may not be a doctor working in a Government hospital.

Part I – Direct Taxes

Section Ref	Basis of Deductions	Proposed Deduction (Rs.)	Existing Allowability
	suffering from disability For person suffering from severe disability	1,25,000	1,00,000
Sec 80G	Deductions in respect of Donations to certain funds, charitable institutions etc.	It is proposed to allow 100% deduction for Donations made towards National Fund for Control of Drug Abuse, Swachh Bharat Kosh & Clean Ganga Fund. ³	NA

b. Deduction in respect of employment of new workmen

Under the existing provisions of section 80JAA an Indian Company is allowed deduction of 30% of the wages of every regular workman⁴ employed over and above 100 workmen subject to the fact that the Company is engaged in the manufacture of goods in a factory. The said deduction is so allowed for a period of 3 assessment years starting from the year in which the employment is granted. It is proposed to reduce the qualifying number of regular workmen to 50 employees. It is further proposed that the benefit of such deduction will be allowed even to Companies that are not Indian Companies

It is proposed to make the above amendments applicable from 1st April 2015 (i.e. AY 2016 – 2017).

³ Contribution to Swachh Bharat Fund & Clean Ganga Fund will not be allowed under 80G where such funds are spent to meet the Corporate Social Responsibility obligations of the assessee under the Companies Act, 2013.

⁴ Regular workmen do not include workmen who are employed as casual workers or where such workmen are employed through contract labour or where such workmen are employed for less than 300 days in a year.

8. Amendments relating to Domestic Transfer Pricing provisions

8.1 Meaning of Specified Domestic transactions [Sec. 92BA]

Section 92BA has been amended in order to give effect to the increase in limit for Specific Domestic Transaction [SDT] from Rs 5 crores to Rs. 20 crores.

It is proposed to make the above amendment applicable from 1st April 2015 (AY 2016 – 2017)

9. Amendments relating to TDS/ TCS [Chapter XVII-B]

It is proposed to make the foregoing changes applicable from 1st June 2015 (for AY 2016-17)

9.1 Particulars of investments & losses to be obtained by employer in a prescribed form for the purpose of TDS on Salary u/s.192

A new form is being prescribed for declaration by an employee of all the tax saving investments & allowable losses that are required to be factored while computing the TDS obligation of the employer u/s.192. At present there is no such form prescribed and therefore, every employer takes the required details from the employees in their self created formats.

9.2 TDS on Payment of accumulated balance due to an employee [New Section 192A is inserted]

As such section 10(12) provides complete exemption to an assessee, being an employee, from income tax on withdrawals from a recognised provident fund. In some circumstances, the said withdrawals do not fulfill the conditions of Rule 8 of Part A of the Fourth Schedule to the Act & therefore, become liable to income tax. At times the employee may have not completed 5 years of continuous service with an employers or has not transferred the balance in his account to a new account after changing his employer. These violations make the receipts from the EPF account to the employee liable to income tax in his hands. In absence of any tax withholding provisions, it was left upto the employee to report the said incomes & pay income tax thereon.

It is now proposed to introduce tax deduction at source (TDS) at the rate of ten per cent on such withdrawals by the concerned officer of the EPF scheme. TDS will not be done where the income payable to the assessee as above is less than Rs.30,000. On the other hand, TDS will be done at the maximum marginal rate of 30% where the assessee fails to provide his or her PAN to the concerned officer of the EPF scheme.

9.3 Amendments relating to TDS on specified Interest payments [194A]

- a. At present TDS is not required to be done by a bank or a co-operative society and a public company where the sums paid or payable as interest do not exceed Rs.10,000 and Rs.5000 respectively. The said threshold limit is computed by the said entities with respect to every branch of such entities. So for example, if Mr.X has a time deposit with the Fort branch of BOI & another one with the Opera House Branch of BOI, each unit will give the benefit of such threshold to the payee.

It is now proposed that such branch wise computation of threshold exemption will be allowed only where the bank or a co-operative society or a public company has adopted core banking solutions. In other words where the said core banking solutions are not adopted the threshold limit will not exceed Rs.10000 or Rs.5000 as is allowed for each branch separately.

- b. It is also proposed to introduce TDS on interest from recurring deposits just like it is the case with time deposits.

9.4 Amendment relating to Transporters for TDS on Contract [194C]

Finance Bill, 2010 allowed a blanket benefit of 0% TDS u/s.194C where the contract fee was paid to a transporter.

It is now proposed that the said benefit of 0% TDS u/s.194C will be restricted to such transport contractors who own 10 or less than 10 goods carriages. In order that the deductor can satisfy its TDS obligations under the Act, the deductor must obtain from the said transport contractor a declaration in writing stating clearly that it owns 10 or less goods carriages along with its PAN.

As a consequence of this amendment, the deductor will now have to start deducting tax at source @ the prescribed rate of 1% or 2% as the case may be for all transporters who own more than 10 goods carriages.

9.5 Amendments relating to TDS on Rent [194I]

It is proposed that no deduction shall be made where the income by way rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust.

9.6 Amendment in relation to Form 15CA / CB under Section 195

In case of incomes tax was not chargeable to Indian Income tax; the payer exercised the discretion of not furnishing Form 15CA / CB.

It is proposed to plug this by providing that irrespective of whether the income is liable or chargeable to Indian income tax, information will have to be provided in form 15CA/CB by the payer.

9.7 Applicability of Form 15G/H expanded by amendment to section 197A

At the present any person other than a Company and a firm are permitted to issue a self declaration in Form 15G/H for

requiring the deductor to avoid doing TDS on incomes like interest covered by section 193 & 194A.

Apart from the above, it is now proposed to give an opportunity to issue such a declaration for non-deduction of tax at source in case of TDS on:

- a. Sums received or receivable from out of the accumulated funds lying with the EPF authorities covered by the new provisions of section 192A;
- b. Sums received or receivable from an insurer under life insurance policy as covered by the provisions of section 194DA.

9.8 Frequently required TDS Rates for AY 2016-17

Sec	Nature of payment	Annual Thresho Id	Rates for Indl./ HUF	Rates in other cases
192	Salaries	NA	Average rate	NA
192A ⁵	Payment of accumulated balance due to an employee	30,000	10%	NA
194A	Interest other than interest on securities (By Bank)	10,000	10%	10%
194A	Interest other than interest on securities (By others)	5,000	10%	10%
194C	Contracts – Single transaction	30,000	1%	2%
194C	Contracts – Annual Aggregate	75,000	1%	2%
194H	Brokerage/ Commission	5,000	10%	10%
194I	Rent – Immovable property	1.8 Lakhs	10%	10%
194I	Rent – Machinery, Furniture, equipment	1.8 Lakhs	2%	2%
194-IA	Purchase of Immovable Property	50 Lakhs	1%	1%

⁵ Applicable from 01-04-2015(AY :2016-17)

Sec	Nature of payment	Annual Threshold	Rates for Indl./ HUF	Rates in other cases
194J	Professional Fees	30,000	10%	10%
194J	Amounts paid to Directors (not being employees of the co.)	NA	10%	10%
194L A	Compensation on compulsory acquisition of immovable property	2,00,000	10%	10%
206A A	Where deductee does not hold PAN or the PAN is invalid	Various	20%	20%

10. Other Key Amendments

10.1 Wealth tax abolished - extra 2% surcharge on super rich

Asking the rich and wealthy to pay higher tax, Finance Minister Arun Jaitley abolished the wealth tax but increased the surcharge to 12 per cent on persons other than domestic and non-domestic companies having a taxable income of Rs 1 crore and above annually and to 7% on domestic companies with taxable income of Rs 10 crores or less and 12% on taxable income greater than 10 crores.

The new measures will lead to tax collection of Rs 9,000 crore approximately vis-a-vis the wealth tax could earn only Rs 1,008 crore in the previous fiscal year.

It is proposed to make the above amendments applicable from 1st April 2015(Assessment Year 2016-17)

10.2 Amendments in Residential Status [Sec 6]

10.2.1 Residential status of a crew member on a foreign bound ship [Sec 6 (1)]

It is has proposed to bring about uniformity in the method of computing period of stay in India for the purpose of determining the residential status of Indian seafarer whether working on a Indian flagged or Foreign flagged vessel/ship. An Explanation 2 to section 6(1) of the Income Tax Act has been proposed to

provide for residential status of a crew member, being an Indian citizen, on a foreign bound ship, where the voyage destination is outside India shall be determined in the manner and subject to the conditions as may be prescribed.

10.2.2 Residential status of a company [Sec 6(3)]

It is proposed to amend the determination of the residential status of a Company. It is proposed to introduce a new concept of 'Place of Effective Management' (POEM). In line with the DTAA's & the international standards in this regard a Company is said to be resident in India where:

- a. The Company is an Indian company; or
- b. The Company's place of effective management, at any time in that year, is in India.

The place of effective management is proposed to be defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as whole are, in substance, made.

11. Measures to curb generation & circulation of Black Money

11.1 Quoting PAN Number is mandatory in specified cases

PAN is a common link to corroborate and test the veracity of transactions. Quoting of PAN is being made mandatory for any purchase or sale exceeding the value of Rs.1 lakh. The third party reporting entities would be required to furnish information about foreign currency sales and cross border transactions. Provision is also being made to tackle splitting of reportable transactions. To improve enforcement, CBDT and CBEC will leverage technology and have access to information in each other's database.

11.2 Amendments in Section 269SS & 269T

To curb the generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income Tax Act so as to ensure that no person shall accept from any other person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank

account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

The Finance Bill 2015 also proposes to amend section 269T of the Income tax Act, so as to ensure that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

It is further proposed to make consequential amendments in section 271D and section 271E to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively.

11.3 Deferment of provisions relating to General Anti Avoidance Rule (GAAR)

The existing provisions of the General Anti Avoidance Rule (GAAR) introduced by the Finance Act, 2013 as contained in Chapter X-A which were about to be introduced from the Financial year 2015-16 shall be further deferred for a period of 2 years and shall be applicable from the FY 2017-18

12. Amendments relating to Assessment procedures.

12.1 Computation of Interest for defaults in payments of Advance Tax in specific situations [Sec 234B]

Section 234 B of the Income Tax Act deals with interest payment on defaults made in payment of Advance Tax.

It is proposed to rationalise the levy of interest on such short payment of advance tax where an application is made to the settlement commission. In that situation, it is proposed that the interest shall be levied as under:

- a. Simple interest rate of 1% shall be levied on the tax due for the period starting from 1st day of April of the relevant

The Finance Minister seems to have formally bid adieu to the much discussed and speculated Direct Tax Code. Since most of the provisions of the DTC are already included in the Income Tax Act and jurisprudence under the Income Tax Act is well evolved, DTC will add no real value in its present form.



**PART II - SERVICE TAX
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2.1 Introduction

In his speech before the house the Honorable Finance Minister described **“GST” as a “GAME” changing reform**. In his words GST will put in place the “State-of-the-Art” indirect tax system by 1-April-2016

In his budget speech he acknowledged that introduction of GST was eagerly awaited by Trade and Industry. To facilitate a smooth transition to levy of tax on services by both the Centre and the States, he proposed to increase the present rate of service tax plus education cesses from 12.36% to a consolidated rate of 14%.

2.2.1 Enhancement in rate of Service Tax

The Service Tax rate is being increased from 12% plus Education Cesses to **14%**.The ‘Education Cess’ and ‘Secondary and Higher Education Cess’ shall be subsumed in the revised rate of Service Tax. Thus, effective increase in Service Tax rate will be from existing rate of 12.36% (inclusive of cesses) to 14%.

The increase in the rate of service tax seems to be in line with the objective to introduction of GST. In the GST era it is expected that the rate of tax on goods and services is going to be higher than the current rates

However the issue of utilization of CENVAT Credit balance of Primary and Secondary education Cess as on the date to be notified does not find any mentioned in the proposals. This is because CENVAT Credit in respect of Cess cannot be utilised for payment of Service Tax

2.2.2 Enabling provision “Swachh Bharat Cess”

An enabling provision is being made to empower the Central Government to impose a “Swachh Bharat Cess” **on all or any** of the taxable services at a rate of 2% **on the value of such taxable services** with the objective of financing and promoting Swachh Bharat initiatives

However, the current proposals do not mention any provision for availment of CENVAT Credit in respect of such Cess

As per the speech of the honorable FM this is just an enabling provision. The excerpts of the FM's speech are reproduced here under:

*“It is also proposed to have an enabling provision to levy Swachh Bharat Cess at a rate of 2% or less on all or certain services **if need arises**”*

[The above will come into effect from date to be notified]

2.2.3 Threshold Exemption Limit

The basic threshold exemption limit of Rs 10 Lakhs remains unchanged

2.3 Legislative changes relating to the negative list [Sec.66D]

Section 66B of the Finance Act 1994 creates a charge on of service tax on the value of services, other than those specified in the negative list

The services enumerated in the negative list therefore go out of the purview of the charging section. The negative list is provided in section 66D of the Act and comprises of various services. Basically the list includes services provided by the government department, essential services, etc

With a view to widen the tax base this budget has proposed to remove certain services from the negative list of services

2.3.1 Admission to entertainment event or amusement facility [Sec. 66D (j)]

As per entry 62 of the State List of the seventh schedule to the Constitution of India, taxes on luxury including entertainment and amusement are within the exclusive power of the States. Accordingly, these services were included in the negative list at the time of introduction of the new regime

The above entry relating to events and amusement facilities is proposed to be deleted. Certain services comprised in this entry have been kept out of the service net (fully or partially) by way of exemption. The proposals are tabulated as under:-

<i>Descripti on of Service</i>	<i>Nature of withdrawal of exemption</i>	<i>Proposal to exempt some of the services as under</i>
Access to Amusement facility	Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and	Exemptions ¹ shall continue for:- Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo

	theme parks	
Admission to events	Service by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event will be liable to service tax	Exemptions ¹ shall continue for:- ❖ award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than Rs 500 per person ❖ If the event is a recognized sporting event ² ❖ If the nature of event is exhibition of cinematographic film, circus, dance, or theatrical performance including drama

¹ Amendment Notification No. 6/2015-ST, dated 01-03-2015

² "Recognised sporting event means any sporting event –

(i) organised by a recognized sports body where the participating team or;

(ii) individual represent any district, state, zone or country

		or ballet
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Although the right to tax admission or entry to events rests falls under the State List which is a subject matter of Entertainment Tax the Finance Bill 2015 seems to have gone beyond its constitutional powers

[The above will come into effect on enactment of the Bill]

2.3.2 Carrying out any process for production of alcoholic liquor [Sec. 66D (f)]

The negative list entry at Section 66D (f) pertains to process amounting to manufacture or production of goods. Currently, such activity is not chargeable to Service Tax

The term “**process amounting to manufacture or production of goods**” is defined under section 65B (40) of the Finance Act 1994. It inter alia includes any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and narcotic drugs and narcotics on which on which duties are leviable under any State Act

It is proposed to amend the entry in the negative list so as to exclude there from “alcoholic liquors for human consumption”. Consequently, the above words have been also omitted from the definition of “process amounting to manufacture or production of goods” in section 65B(40) of the Act

Under the Business Auxiliary services (under the pre-negative list era) levy of Service Tax on production of alcoholic liquors has been a litigated³ issue. Initially the negative list era kept this activity out of the tax net.

³ Som Distilleries Pvt Ltd Vs Union of India [(2009) TIOL 292 (MP)]

However, the government seems to have now opened this area for levy of Service Tax (perhaps a move towards GST regime)

Exemption in respect of Contract Manufacturing of Alcoholic Liquors

The mega exemption notification (entry 30(c) of Notification No. 25/2012-ST, dated 20-06-2012) relating to exemption for job workers/ intermediate production has also been amended⁴ to exclude job workers producing alcoholic liquors for human consumption

[The above will come into effect on enactment of the Bill]

⁴ Amendment Notification No. 6/2015-ST, dated 01-03-2015

2.3.3 Any service (except those in the negative list) provided by the Government now taxable [Sec. 66D (a)]

Currently, services provided by the Government or local authority *except certain services enumerated in 66D(a)(i) to (iii) and support services⁵ [Section 66D(a)(iv)] provided to business entities* are covered by the negative list.

The last clause in the list of government services that are liable for payment of service tax is restricted to “support services”. With a view to widen the tax base it is proposed to extend the levy to “any” services provided to business entity. This amendment is set to garner huge revenues to the government

Further, with a view to avoid any further confusion and interpretational issues the term “government” is being defined⁶. The proposed definition is reproduced here under:-

“(26A) “Government” means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution⁷ or the rules made there under”

[The above will come into effect on enactment of the Bill]

2.4 Review of existing Exemptions

⁵ Section 65B(49) defines the term “Support services”

⁶ Proposed insertion of Section 65B(26A) of the Finance Act 1994

⁷ Form of Accounts to be maintained by the Union and the State

2.4.1 Specified constructions services provided to Government

Currently, specified construction services for non-business purpose which are provided to government⁸ are exempted under the mega exemption notification⁹. The existing and proposed changes are tabulated here under:

Nature of Services covered under the exemption	Existing Scope of exemption	Proposed Scope of exemption¹⁰
<p>Services in the nature of Construction, erection, commissioning, installation, completion, fitting out, repairs maintenance and renovation of -</p>	<ul style="list-style-type: none"> • Works meant for the use of non-business purposes • Historical monuments and sites • Structure meant for the use of educational, clinical or cultural establishment • Canal, dam or irrigation works • Pipe line, conduit or plant for water supply, 	<ul style="list-style-type: none"> • Historical monuments and sites • Canal, dam or other irrigation works • Pipe line, conduit or plant for water supply, treatment or sewerage

⁸ Government, local authority or governmental authority

⁹ Notification No 25/2012-ST, dated 20-06-2012 entry serial no. 12

¹⁰ Notification No 6/2015-ST, dated 01-03-2015 giving effect to above proposal

	treatment or sewerage • Residential complex for self use	
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[The above will come into effect from 01-04-2015]

2.4.2 Exemption relating to constructions services in respect of specified original works

Currently, mega exemption notification inter alia exempts specified construction services of original works pertaining to an airport or port¹¹. This exemption has been withdrawn¹². The other exemptions covered under the same entry applicable which inter alia include railways, monorail and metro rail shall still continue

[The above will come into effect from 01-04-2015]

2.4.3 Services of a performing artists

Currently, the mega exemption notification¹³ grants exemption to services provided by performing artists in folk or classical forms of music, dance, and theatre (excluding services by such artists as brand ambassadors)

The current exemption has been restricted¹⁴ to cases where the amount charged by such artists for the performance is up to Rs.1,00,000/-

[The above will come into effect from 01-04-2015]

2.4.4 Exemption relating to transportation of food stuff

¹¹ Notification 25/2012-ST, dated 20-06-2012 Serial No 14

¹² Notification No 6/2015-ST, dated 01-03-2015

¹³ Notification No 25/2012-ST, dated 20-06-2012 Serial No. 16

¹⁴ Amendment Notification No. 6/2015-ST, dated 20-06-2012

Currently, transportation of foodstuff by rail, vessel and road are exempted¹⁵. The scope of this exemption is proposed to be narrowed as under:-

The relevant exiting provisions and proposals¹⁶ are tabulated here under:-

Existing provisions	Proposals
Transport services in respect of foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil excluding alcoholic beverages	Transport services in respect of milk, salt and food grain including flours, pulses and rice

[The above will come into effect from 01-04-2015]

2.4.5 Exemption relating to Agents/ Intermediary Services

The taxability of mutual fund agents and lottery agents was a matter of wide scale litigation. History has witnessed a lot of litigations and amendments in the area of Service tax liability in respect of services provided by financial intermediaries/ agents.

It has been held by the Honorable Sikkim High Court¹⁷ that the activity of promotions, organising, reselling or any other manner assisting in arranging of lottery tickets of the State Lotteries does not establish the relationship of a principal or an agent but rather that of a buyer and a seller and, on principal to principal basis in view of the nature of the transaction consisting of bulk purchases of lottery tickets on full payment on a discounted price as a natural business transaction. For the above reason it was concluded by the honorable court that transactions in lottery tickets is not liable for payment of service tax

¹⁵ Notification No. 25/2012-ST, dated 20-06-2012 Serial No. 20/21

¹⁶ Amendment Notification No. 6/2015-ST, dated 20-06-2012

¹⁷ Future Gaming Solutions India P Ltd Vs Union of India [WP(C) No 32 of 2012]

The introduction of negative list regime provided a booster dose for the mutual fund industry and lottery agents as the services of these agents were exempted under the mega exemption notification¹⁸

The Finance Bill 2015 has withdrawn this exemption¹⁹ in respect of following intermediary services provider:

1. Services of mutual fund agents
2. Distributor to a mutual fund or an AMC
3. Lottery Agent services to a distributor

However, service tax on these services shall be levied on reverse charge basis. Amendment to RCM provisions as per Notification 30/2012 have been simultaneously carried out²⁰. Accordingly, service tax in respect of these agents shall be payable by the mutual fund or the AMC. This amendment takes us back to the position that existed during the pre-negative list era.

[The above will come into effect from 01-04-2015]

2.4.6 Exemption regarding payments to overseas commission agent

Originally, intermediary of goods were liable for payment of service tax under the POPS²¹ Rules based on the place of recipient of services (Rule-3).

The Finance Act 2014 (Effective 01-10-2014) amended the POPS Rules to cover intermediaries of both goods and services on the same footing by providing that intermediaries of goods as well as services shall be governed by provisions of Rule 9(c) of POP Rules and be liable for payment of service tax based on the location of service provider

¹⁸ Notification No. 25/2012-ST, dated 20-06-2012 Serial No. 29 entry (c), (d) and (e)

¹⁹ Amendment Notification No. 6/2015-ST, dated 01-03-2015 entry no (viii)

²⁰ Amendment Notification No 7/2015-ST, dated 01-03-2015

²¹ Place of provision of Services Rules 2012

With the above position in law payment of export commission to overseas agent was out of the Service tax net from 01-10-2014.

Accordingly, the specific exemption granted under Notification No. 42/2012-ST, dated 29-06-2012 became redundant. Hence, this notification has been rescinded with immediate effect²²

2.5 Introduction of new exemptions

2.5.1 Transportation of patients by ambulance operators

Currently, only those healthcare services which are provided by clinical establishments, authorized medical practitioner or para-medical are exempt. Accordingly, ambulance services provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax.

It is proposed to expand the scope of this exemption to ensure that ambulance services provided by any person gets covered under this exemption

2.5.2 Life Insurance service

Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted. It appears that this exemption is introduced keeping in mind that the beneficiaries of this scheme are senior citizens

2.5.3 Common Effluent Treatment Plant

Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted. In the backdrop of "SWACHH BHARAT" campaign this exemption is aimed at services connected with betterment of environment.

²² Rescinding Notification No. 3/2015-ST, dated 01-03-2015

2.5.4 Preservation of fruits and vegetables

Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted perhaps with an intention to incentivize this sector.

2.5.5 Admission to certain amusement facilities

Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted, and the same services provided by the government or local authorities are covered under negative list.

These amendments are consequential to removal of entry from the negative list

2.5.6 Services relating to exhibition of film/ movie

❖ Modus operandi of film distribution

Normal business practice in the film industry is that the producer of the film, who is the owner of the IPR in the film, temporarily transfers these rights to a distributor. The distributor in turn enters into an agreement with the theatre owner/ the exhibitor for screening of the film

❖ Taxability of transactions between distributor & exhibitor

Further, the distributor may temporarily transfer the IPR to the exhibitor of the film for screening in the cinema hall. Under the negative list regime such transfer is specifically exempted under entry 15 of Notification No. 25/2012-ST. This position was also clarified²³ by the CBEC during the pre-negative list era.

❖ Fresh clarification unsettles the above position regarding taxability of transactions between distributor & exhibitor

However, during the pre-negative era the settled position as referred above was unsettled by fresh clarification²⁴ issued by the CBEC in 2011. In terms of the circular where no such IPR are transferred by the distributor to the exhibitor, the same is not chargeable to service tax under Copyright Services.

However the business transaction needs to be examined for levability of service tax under other service categories. Depending upon the arrangement whether the theatre owner has merely let out its premises to the distributor or is also involved in giving support services for the business of the distributor, there can be a case of levability of service tax on the remuneration retained by such theatre owner under “Business Support service” or “Renting of Immovable Property”. The definition of “Business Support service” was amended by Finance Act 2011 to include “operational or administrative assistance in any manner” in its definition.

²³ Circular No. 109/03/2009, dated 23-02-2009

²⁴ Circular No. 148/17/2011-ST, dated 13-12-2011

The said circular further went to clarify that in case of revenue sharing agreements a “new entity” emerges and the services by each constituent to the new entity becomes taxable services

❖ ***Circular upheld in by the Madras High Court***

The above circular led to widespread litigation. However, the circular found further support in the decision of the Madras High Court²⁵. Based on this a number of disputes have arisen in respect of nature of transactions between distributors and exhibitors. This issue continues in the negative list era in spite of the existence of exemption under NN 25/2012-ST

❖ ***Finance Bill 2015 puts to rest this issue “PROSPECTIVELY”***

The Finance Bill 2015 has amended²⁶ the exemption to exempt service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of its members is being exempted. However, since the amendment is prospective in nature it would be pertinent to note its impact on the past period disputes relating to this issue

2.5.7 Transport charges on goods to be Export

Currently, Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax²⁷

The scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs stations

²⁵ Mediaone Global Entertainment Ltd Vs CCCE, Chennai [(2014) 34STR 819 (MAD)]

²⁶ Amendment Notification No. 6/2015-ST, dated 01-03-2015

²⁷ Notification No. 31/2012-ST, dated 20-06-2012

[All the above New Exemptions shall come into effect from the 1st day of April, 2015.]

2.6 Amendments in “Abatements”

2.6.1 Abatement rates for goods transport services

With a view to bring uniformity in the abatement rates available for various modes of goods transport a uniform rate of abatement is proposed. The current and proposed abatement rates (*presuming Tax rate of 14% w.e.f 1-4-2015*) and effective tax rates are summarized here under:

Descripti on of Taxable service	Existing provisions		Proposed Provisions	
	Taxable value after Abateme nt rate	Effecti ve Tax rate²⁸	Taxable value after Abatem ent rate	Effecti ve Tax rate²⁹
Transport of goods by Rail	30%	3.708%	30%	4.2%
Transport of goods by Road	25%	3.090%	30%	4.2%
Transport of goods by vessel	40%	4.944%	30%	4.2%

In effect for all modes of goods transport Service tax shall be payable on 30% of the value with a uniform condition of non-availment of CENVAT Credit on inputs, input services and capital goods

[The above will come into effect from 01-04-2015]

2.6.2 Abatement rates for Air Transport Services

²⁸ Tax rate 12.36% (Including primary and secondary Cess)

²⁹ Presuming a Tax Rate of 14% (not considering Swachh Bharat Cess)

Currently, Service Tax is payable on 40% of value of air transport of passenger across all fare classes. In this regard following changes are proposed:

Descripti on of Taxable service	Existing provisions		Proposed Provisions	
	Taxable value after Abateme nt rate	Effecti ve Tax rate²⁸	Taxable value after Abatem ent rate	Effecti ve Tax rate²⁹
Passenger Transport by Air Economy	40%	4.944%	40%	5.6%
Passenger Transport by other than above	40%	4.944%	60%	8.4%

The above abatements are subject to the condition of non-availment of CENVAT Credit on inputs and capital goods under the CENVAT Credit Rules 2004

[The above will come into effect from 01-04-2015]

2.6.3 Abatement in relation to chit fund withdrawn

Abatement Notification 26/2012-St, dated 20-06-2012 provides an abatement of 30% in the relation to services provided in relation to chit. The answer to whether the services in relation to conducting a chit business in a service liable for payment of service tax was given by the honorable Delhi High Court in the case of Delhi Chit Fund association's case³⁰.

It was observed by the honorable HC that in a chit fund, the subscription is tendered in any one form of money as

³⁰ Delhi Chit Fund Association Vs Union of India [2013] 32 taxmann.com 332 (DEL)

defined in section 65B (33) of the Finance Act 1994. It would therefore be a transaction in money and accordingly fall in the exclusion clause of the term "Service" as defined in section 65B(44) of the Act

In order to counter the effect of the above decision it has been proposed to insert an explanation in the definition of service to specifically state the intention of the legislature to levy Service Tax on the activities undertaken by the chit fund foreman in relation to the chit.

It is proposed to remove the abatement relating to chit business. Consequently, service tax shall be payable by the chit fund foreman on the full consideration received by way of fee, commission or any such amount.

Simultaneously, an explanation is being added in entry (i) of section 66D to specifically state that these activities are not covered by the negative list

[The above will come into effect from 01-04-2015]

2.7 Changes in composite rates of service tax

Rule 6 of the Service Tax Rules provide for composite rates for certain services which are alternate to other options provided (if any) in the law relating to service tax. Since the basic rate of service tax under section 66B of the Act has been enhanced, consequent pro-rata revisions have been made in service specific composite rates. The amendments in this regard are tabulated here under:-

Service category	Existing composite rates		Proposed amendments	
Air Travel booking agents' services	Domestic Travel	0.6% of basic fare	Domestic Travel	0.7% of basic fare
	Intl'	1.2%	Intl'	1.4%

Service category	Existing composite rates		Proposed amendments	
	bookings	of basic fare	bookings	of basic fare
[Rule 6(7)]				
Life Insurance Services [Rule 6(7A)]	For 1 st year of policy	3% of premium	For 1 st year of policy	3.5% of premium
	For subsequent Years	1.5% of premium	For subsequent Years	1.75% of premium
Purchase/ Sale of Forex /Money Changing services [Rule 6(7B)]	Slabs	ST payable	Slabs	ST Payable
	Up to Rs1,00,000	0.12% of value exchange (Min- INR 30)	Up to Rs1,00,000	0.14% of value exchange (Min- INR 35)
	1,00,001 to 10,00,000	Rs 120 + 0.06% of value exchanged exceeding Rs 1 Lakhs	1,00,001 to 10,00,000	Rs 140 + 0.07% of value exchanged exceeding Rs 1 Lakhs
	> Rs 10,00,000	Rs 660 + 0.012 % of value exchange	> Rs 10,00,000	Rs 770 + 0.014% of value exchange

Service category	Existing composite rates		Proposed amendments	
		exceeding Rs 10,00,000 (Maximum Rs.6,000)		exceeding Rs 10,00,000 (Max Rs,7,000)
Lottery agents' services [Rule 6(7C)]	If pay out guaranteed > 80%	Rs 7,000 on every Rs. 10 Lakhs of face value of tickets printed	If pay out guaranteed > 80%	Rs 8,200 on every Rs. 10 Lakhs of face value of tickets printed
	If pay out guaranteed < 80%	Rs 11,000 on every Rs. 10 Lakhs of face value of tickets printed	If pay out guaranteed < 80%	Rs 12,800 on every Rs. 10 Lakhs of face value of tickets printed

[This will come into effect from 01-04-2015]

2.8 Changes relating to reverse charge mechanism ("RCM")

Changes in respect of RCM are elaborated in the subsequent paragraphs

2.8.1 Partial RCM in respect manpower Supply services and security agency services

Prior to the advent of negative list regime, only import and Goods transport of agency services were covered under the RCM of payment of Service Tax

The advent of negative list regime brought with it a wider net of services under the RCM. Further, a concept of partial RCM was also introduced (where both the provider and receiver of Service share the liability towards payment of Service Tax). Partial RCM coupled with abatements has led to a complex rate structure in place. This has led to the following issues in the corporate service receivers:-

- ❖ Complexity in calculations and compliance cost
- ❖ Greater risk of short payment of service tax
- ❖ Interpretation issues

Instead of introducing simplicity in tax payment and compliance the concept of RCM especially the partial RCM has led to an undesirable situation. It seems that with an intention to address the above issues to some extent the partial RCM has been removed in a couple of services as under:

Descripti on of Taxable service	Existing provisions³¹		Proposed Provisions³²	
	% of service tax payable by the receiver	Effecti ve Tax rate²⁸	% of service tax payable by the receiver	Effecti ve Tax rate²⁹
Manpower Supply services	75%	9.27%	100%	14%
Security	75%	9.27%	100%	14%

³¹ Notification No. 30/2012-ST, dated 20-06-2012

³² Amendment Notification No. 7/2015-ST, dated 01-03-2015

Agency Services				
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[The above will come into effect from 01-04-2015]

2.8.2 RCM in respect of agents of Mutual Funds and agents of lottery distributors

Consequent to the withdrawal of exemption in respect of services provided by intermediaries of mutual fund and lottery business services provided by these agents are proposed to be covered under the 100% RCM

Accordingly, Service Tax in respect of the fund agent or the distributor, as the case may be, shall be paid by the AMC or the Mutual fund

On the other hand Service Tax in respect of lottery agents shall be paid by the distributor of the lottery

[The above will come into effect from 01-04-2015]

2.9 Amendments in Service Tax Rules

2.9.1 Acceptance of Digitally signed invoices

Computerisation and information technology has reached to a highly developed stage. In large corporate houses thousands of invoices are printed on a daily basis. Apart from waste of paper it also involves task of signing too many invoices and multiple copies in the age of digital signatures

It is relevant to note the provisions of section 5 of the Information Technology Act, 2000. The provision is reproduced here under:-

“Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been

satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation: For the purposes of this section, "Signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "Signature" shall be construed accordingly."

In this backdrop the following amendments have been proposed to the Service Tax Rules in this regards:-

- ❖ Any Bill or challan issued under Rule 4A or consignment note issued under Rule 4B can be authenticated by means of digital signature
- ❖ Maintenance of records as per Rule 5 has been permitted in electronic form subject to authentication of each page of such records by using a digital signature
- ❖ CBEC may specify the conditions, safeguards and procedure to be followed opting for the above facility

[The above will come into effect from 01-03-2015]

2.9.2 List of documents prescribed for ease of registration of single premise

With the intent to promote ease in tax administration and to provide easy and fast registration for single premises Rule 4 has been amended. Order No 1/2015-ST, dated 28-02-2015 has been issued (effective 01-03-2015) specifying the procedure, documents, time limit with respect to registration of single premise

In terms of the said order the registration shall be granted within 2 days of online application on aces.

Subsequently, the prescribed documents as contained in the order shall have to be sent within prescribed time after the online application on aces

2.9.3 Amendment to the definition of “person liable to pay tax”

Rule 2(1)(d) defines “person liable to pay service tax”. The definition of person liable to pay service tax is amended to make an “aggregator” (including any of his representative office in India) as a person liable to pay service tax in respect of any service provided under an aggregator model

In case the aggregator does not have any presence in India, including presence by way of a representative, an agent appointed by such aggregator shall pay Service Tax

Consequent amendment is made in NN 30/2012-ST. Entry 11 has been added to provide for payment of service tax under 100% RCM

In this context “aggregator” has been defined under Rule 2(1)(aa) of the STR. The definition is reproduced here under:-

*“(aa) **aggregator** means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator”*

This amendment intends to bring within the tax net the fast growing “aggregator” form of business. Further, in the tax has been introduced under 100% RCM. This is because if every partner of the aggregator is tapped they may fall below the basic threshold exemption limit and in that case the revenue cannot be brought within the tax net

2.10 Amendments in CENVAT Credit Rules (“CCR”)

2.10.1 CENVAT in respect of inputs and capital goods directly sent to job workers³³

- ❖ Rule 4(1) and 4(2) of the CCR is being amended to provide that where inputs or capital goods are sent directly sent to the job worker
- ❖ Accordingly, CENVAT Credit in respect of such inputs or capital goods sent to the premise of the job worker on the direction of the manufacturer shall be available at the time of receipt thereof at the premises of the job worker
- ❖ Consequential amendments have been made relating to time limit of 180 days referred to in Rule 5(a)(i) has been amended and accordingly the time limit of 180 days shall be counted from the date of receipt of the inputs in the premises of the job worker
- ❖ The time limit in respect of “capital goods” as contained in Rule 5(a)(ii) has been enhanced from 180 days to 2 years from the date of receipt of capital goods in the premises of the job worker

[The above will come into effect from 01-03-2015]

2.10.2 Amendment relating to CENVAT Credit relating to partial RCM

The Cenvat Credit Rules have been amended vide Union Budget 2014 to provide that in case of partial reverse charge, the Cenvat credit on an input service shall be allowed only after the service receiver makes payment of the value of service along with service tax to the service provider. However, in case of full reverse charge, credit can be availed when service receiver pays service tax to the Government, even if the value of service has not been paid to service provider

³³ Amendment to CENVAT Credit Rules 2004 vide Notification No. 6/2015-CE(NT), dated 01-03-2015

Currently, in terms of Rule 4(7) CENVAT Credit in respect of amount payable under partial RCM is linked to the payment of invoice of the service provider. To bring partial RCM parallel to 100% RCM CENVAT it has been proposed to allow CENVAT Credit in such cases the CENVAT Credit can be taken on payment of such service tax

[The above will come into effect from 01-03-2015]

2.10.3 Period for availment of CENVAT increased to 12 months

Finance Act 2014 inserted a proviso in Rule 4(7) of the CENVAT Credit Rules 2004³⁴. This amendment restricted the time limit for availing CENVAT Credit to 6 month from the date of the invoice, challan, bill or any other document mentioned in Rule 9(1) of the CENVAT Credit Rules 2004

This amendment had a large scale impact on the large industries where the volume of inputs and input services (on which CENVAT is available) is huge. In that sense the time limit of 6 months was too small to ensure full availment of rightful claims of CENVAT

It has been held³⁵ by the Apex Court that CENVAT credit is an indefeasible right. CENVAT credit is a benefit for any assessee and the same cannot be denied on the basis of an artificial provision. This will increase the cascading effect and defeat the vary purpose of the CENVAT Credit Rules

The proposed amendment though not in line with the pronouncement of the Apex Court it does provide for a much required breather

[The above will come into effect from 01-03-2015]

³⁴ Inserted vide Notification No. 21/2014-CE(NT), dated 11-07-2014 w.e.f. 01-09-2014

³⁵ Collector of Central Excise, Pune Vs Dai Ichi Karkaria Ltd [(1999) 112 ELT 353 (SC)]

2.10.4 Reversal of CENVAT Credit on inputs and input services now required in respect of non-excisable goods

Currently, the definition of exempted goods does not include non-excisable goods. Accordingly, there was no clarity regarding reversal of CENVAT Credit in the case of an assessee manufacturing both, excisable and non-excisable goods. It has been held³⁶ by Delhi CESTAT that reversal is not required in such cases

In order to reverse the effect of this decision an explanation has been added to Rule 6(1) of the CCR defining “exempted goods” to include non-excisable goods

[The above will come into effect from 01-03-2015]

³⁶ Sahni Strips and Wires P Ltd Vs CCE [(2012) 283 ELT 418 (Tri-Delhi)]

2.10.5 Provisions relating to recovery of CENVAT Credit wrongly availed but not utilised [Rule 14 of CCR]

- ❖ The existing provisions relating to recovery of CENVAT Credit wrongly taken and utilised are contained in Rule 14 of the CCR. The provisions relating to interest and recovery contained in section 75 and 73, respectively are made applicable to cases relating to wrong availment and utilisation of CENVAT Credit as per existing Rule 14 of the CCR
- ❖ Prior to its substitution³⁷ it was held³⁸ by the Apex Court that Rule 14 was applicable even if the CENVAT Credit is “wrongly” taken but not utilised since the words “taken and “utilised” were separate by “OR”.
- ❖ This anomaly was put to rest w.e.f 17-3-2012 where the interest applicability was made applicable only where such availment was followed by credit being utilised. However, there was no mechanism to provide as to when the inadmissible Credit was utilised.
- ❖ Now this amendment seems to re-state the apex court’s decision as referred above
- ❖ The provisions of Rule 14 have been substituted. A new Sub-rule (1)(i) has been inserted to provide that where the CENVAT Credit has been taken but not utilised, the same shall be recovered from the manufacturer or the service provider in terms of section 11A of the CE Act or Section 73 of the Finance Act, as the case may be
- ❖ Further a new sub-rule (1)(ii) has been inserted to provide that Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with

³⁷ Vide Notification No. 18/2012-CE(NT), dated 17-3-2012 w.e.f. 17-3-2012

³⁸ In Union of India Vs Ind-Swift [(2011) 30 STT 461 (SC)]

interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

❖ In order to bring clarity regarding point of time where the CENVAT Credit is deemed to have been utilised a new sub-rule (2) has been inserted which clarifies that all credits taken in a month shall be deemed to have been taken as at the last day of the month. It further provides the manner of calculating utilisation of credit as under:-

- a) Opening balance of the month has been utilised first;
- b) Admissible credits have been utilised next
- c) Inadmissible credits have been utilised there after

[The above will come into effect from 01-03-2015]

2.10.6 Provisions relating to penalty in the cases of wrong utilisation [Rule 15 of CCR]

The penalty provisions have now been aligned to the provisions of section 11AC of the CE Act, 76 and 78 of the Finance Act 1994. The amendments are tabulated here under:-

<i>Nature of default</i>	<i>Existing provisions</i>	<i>Proposed provisions</i>
Wrong availment or utilisation of CENVAT Credit	Amount of duty or tax or Rs 2,000 whichever is higher	In terms of clause (a) or clause (b) of sub-section (1) of section 11AC of the CE Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be

Wrong availment by a manufacturer involving fraud, collusion, etc	In terms of Section 11AC of the CE Act	In terms of clause (a) or clause (b) of sub-section (1) of section 11AC of the CE Act
Wrong availment by a manufacturer involving fraud, collusion, etc	In terms of Section 78 of the Finance Act	In terms of Section 78(1) of the Finance Act

[The above will come into effect from the date on which the Finance Bill, 2015 receives the assent of the President]

2.11 Amendments relating to penalty & recovery provisions

2.11.1 Recovery of declared unpaid Service Tax dues

Where a person liable to pay service tax files a return in Form ST-3 under self assessment but does not pay the service tax as declared in the return (in part or in full), newly inserted section 73(1B) empowers the government to initiate recovery proceedings by any mode as provided in section 87 of the Act ***without serving any notice***

Provisions on similar lines were already contained under Rule 6(6A) of the Service Tax Rules 1994. However, the proposal empowers the government to move forward with recovery without any notice on the assessee

[The above shall come into effect as and when the revised Service Tax rate comes into effect.]

2.11.2 Penalty for failure to pay Service Tax [Sec.76]

The exiting provisions of section 76 of the Act provide for levy of penalty for non-payment, short payment or erroneous refund of service tax in cases not involving fraud, collusion, mis-statement or suppression of facts without the intent to evade service tax. The entire section has been revamped with new provision. For the sake of

better comprehension the proposals are tabulated here under:

Circumstances	Penalty
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of service of show cause notice u/s 73(1) of the Act	No penalty ³⁹
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of receipt of adjudicating order u/s 73(2) of the Act	25% of the penalty levied in the Order ⁴⁰ <i>(provided that the reduced penalty is also paid within the period of 30 days)</i>
Where the amount of service tax determined in the order u/s 73(2) by the Commissioner (Appeals), Appellate Tribunal or the Court	25% of such modified penalty ⁴¹ <i>(provided that the reduced penalty is also paid within the period of 30 days of receipt of the modifying order)</i>
In all cases not covered above	Not exceeding 10% of the Service Tax amount

The above provisions in short cap the maximum penalty leviable u/s 76 of the Act to 10% of the service tax amount

³⁹ Clause (i) of proviso to Section 76(1) of the Act

⁴⁰ Clause (ii) of proviso to Section 76(1) of the Act

⁴¹ Section 76(2) of the Finance Act 1994

In terms of provisions of section 78B of the Act the benefit of the reduced penalty shall be applicable in the following cases

- ❖ No show cause notice has been served u/s 73(1) or the proviso there to as at the date of enactment of the Finance Bill 2015
- ❖ No Order u/s 73(2) has been received as at the date of enactment of Finance Bill 2015

2.11.3 Penalty for failure to pay Service Tax fraud, collusion, etc [Sec.78]

The exiting provisions of section 78 of the Act provide for levy of penalty for non-payment, short payment or erroneous refund of service tax in cases involving fraud, collusion, mis-statement or suppression of facts or contravention of any provisions of the Act with the intent to evade service tax. The entire section has been revamped with new provision. For the sake of better comprehension the proposals are tabulated here under:

Circumstances	Penalty
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of service of show cause notice u/s 73(1) of the Act	15% of the Service Tax amount ⁴²
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of receipt of adjudicating order u/s 73(2) of the Act	25% <i>of the service tax</i> determined in the Order ⁴³ <i>(provided that the reduced penalty is also paid within the period of 30 days)</i>
Where the amount of service	25% of the

⁴² Clause (i) of first proviso to Section 78(1) of the Finance Act 1994

⁴³ Clause (ii) of first proviso to Section 78(1) of the Finance Act 1994

tax determined in the order u/s 73(2) by the Commissioner (Appeals), Appellate Tribunal or the Court	modified amount of service tax as per the decision ⁴⁴ <i>(provided that the reduced penalty is also paid within the period of 30 days of receipt of the modifying order)</i>
In all cases not covered above	Not exceeding 100% of the Service Tax amount

In a way the benefit of 25% penalty provided in section 73(4A) (which is deleted) has been subsumed in this section

In terms of provisions of section 78B of the Act the benefit of the reduced penalty has been made applicable in the following cases

- ❖ No show cause notice has been served u/s 73(1) or the proviso there to as at the date of enactment of the Finance Bill 2015
- ❖ No Order u/s 73(2) has been received as at the date of enactment of Finance Bill 2015

2.11.4 Penalty in cases under audit, investigation or verification [Sec. 78B(2)]

These provisions are transitory and override the provisions contained in section 78B(1). It intends to cover cases falling under the deleted provisions of section 73(4A). It is evident from a combined reading of the existing provisions of Sec 73(4A) and Sec 78B(2) that, where –

⁴⁴ Section 78(2) of the Finance Act 1994

- ❖ Where in the course of any audit, investigation or verification, it is found that there is a short payment, non-payment or erroneous refund, and;
- ❖ Complete details of the transactions are available in the specified records, and;
- ❖ No Show cause notice is served u/s 73(1) of the Act and if served no order u/s 73(2) of the Act has been passed

The penalty shall not exceed 50% of the service tax determined

[The above shall come into effect as and when the revised Service Tax rate comes into effect.]

2.11.5 Section 80 omitted

With the rationalization of the penal provisions section 80 of the Act which provided waiver of the penalty in certain circumstances has been omitted.

In cases where reasonable cause could have been proved the deletion of this section may not be welcomed

2.12 Other Amendments

2.12.1 Remedy against order of Commissioner (Appeals) in cases of rebate of service tax [Section 86]

- ❖ Section 86 relating to appeals is proposed to be amended to make provision for revision by Central Government u/s 35EE of the CE Act applicable to orders passed by the Commissioner (Appeals) in matters involving rebate of input services or inputs in the case of export of services
- ❖ It has been provide that all appeals filed before the Tribunal after the enactment of Finance Bill 2012 and pending as on the date of enactment of Finance Bill 2015 shall be transferred and dealt in accordance with the provisions of section 35EE of the CE Act

2.12.2 Expansion of definition of the term “consideration” [Sec 67]

Section 67 deals with valuation of taxable services. Explanation to Section 67 of the Act contains the definition of the term “consideration”. Currently, this includes any amount that is for provision of taxable services. The scope of this definition is proposed to be widened so as to include any reimbursable cost or expenditure incurred by the service provider and charged, in the course of provision of service, except in circumstances and subject to such conditions as may be prescribed

In a recent decision of the honorable Delhi High Court it was held⁴⁵ that

- ❖ On a conjoint reading of Sections 66 and 67 of the Act, it is only the value of the taxable service that can be brought to charge of service tax and nothing more
- ❖ The explanation to section 67 of the Act does not include out of pocket expenses such as travel, accommodation, etc
- ❖ By including the costs and expenditure, Rule 5(1) of the valuation rules goes beyond the charging provisions and cannot be upheld
- ❖ Hence, the above rule is *ultra vires* Section 66 and Section 67 of the Act and has to be struck down as bad in law

It is evident that this amendment is proposed to overcome the above referred decision of the honorable Delhi High Court

2.12.3 Advance Rulings

The facility of Advance Ruling has been extended to all resident firms, which has been defined to include the following resident entities within its scope:

- ❖ A “firm” as per Section 4 of the Indian Partnership Act, 1932;

⁴⁵ Intercontinental Consultants & Technocrats Ltd Vs Union of India [(2013) (29) STR 9 (DEL)]

- ❖ The limited liability partnership (LLP) as per section (2)(1)(n) of the Limited Liability Partnership Act, 2008.
- ❖ LLP which has no company as a partner
- ❖ The sole proprietor
- ❖ One person company

[The above will come into effect from 01-03-2015]



**PART III - CENTRAL EXCISE
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1. Changes in Excise Duty rates

There is an amendment in peak rates of Excise Duty. As such under excise duty regime there are 3 key rates as presented hereinafter but one must bear in mind that in case specific commodities the concerned revenue authority has also provided for some notified rates.

The excise duty rate structure will be as stated hereunder as far as ad valorem rates are concerned:

<i>Rates effective from 01.03.2015</i>	<i>Rates upto 28.2.15</i>
2% without Cenvat	2% without Cenvat
6% with Cenvat	6% with Cenvat
12.5% with Cenvat	12% with Cenvat

2.1 Abolition of Education & Higher Education Cess

Vide Finance Act, 2004 & Finance Act, 2007 the Government notified Education & Higher Education Cess ('EC & SHC') that was required to be levied on the excise duty computed. The said EC & SHC have now been subsumed in the peak rate of excise duty itself. So upto 28.2.15, a manufacturer charged ED of 12% + EC & SHC of 3% on 12% that amounted to an effective rate of 12.36%. This rate was rounded off to 12.5%. In the bargain, the manufacturer will no longer be required to levy any EC & SHC on the excise duty element from 01.03.2015 but instead levy the peak rate of 12.5% where the goods cleared attract such peak duty rate. In case of goods that are covered by any concessional rate will now attract a flat levy of ED only & there will be no additional EC & SHC element added thereon.

2.2 Chapter-wise view of Excise Duty Rate Structure

There is no change in the rate structure, except for the change in the peak excise duty rate as stated above in cases where the peak rate of 12% is already applicable, in the case of goods covered by Chapters 1 to 3, Chapters 5 to 19, Chapter 23, Chapter 26, Chapters 28

to 32, Chapters 34 to 38, Chapters 40 to 63, Chapters 65 & 71, Chapters 75 to 83, Chapters 86, Chapters 88 to 89, Chapters 91 to 96.

There have been specific changes in rates of excise duty in case of **some** (*emphasis supplied*) of the goods covered by Chapter 4, Chapter 20 to 22, Chapter 24 to 25, Chapter 27, Chapter 39, Chapter 64, Chapter 72 to 74, Chapter 84 to 85, Chapter 87 & Chapter 90. Except for the specific inclusions & exclusions made in these chapters the rates in relation to all the other goods covered by these chapters will be impacted by the change in the peak excise duty rate as stated above in cases where the peak rate of 12% is already applicable.

Again it will be pertinent to note that the unchanged chapters might relate to goods that have special notified rates. These rates have remained unchanged subject to the details of amendments in ED Rates given in the tables here in below.

The change in the basic rate structure as referred to above is provided hereunder at pts. 2.3 to 2.5.

2.3 ED rate enhanced or newly introduced

All changes stated herein will be effective from 1st March 2015

In the following cases ED rate is being enhanced or newly introduced vide notification numbers 12/2015, 7/2015, 8/2015 dated 01.03.2015:

Chapter Reference	Particulars	ED Rate with Cenvat	ED Rate without Cenvat
Chapter 4	Condensed milk put in unit containers	6%	2%
Chapter 20	Peanut Butter	6%	2%
Chapter 84	Solar water heater & system	12.5%	0%
Chapter 84	Tablet computer	12.5%	2%
Chapter 85	Mobile handsets including cellular	12.5%	1%

Chapter Reference	Particulars	ED Rate with Cenvat	ED Rate without Cenvat
	phones		

2.4 ED rate enhanced from peak rate of ED (12%) to new notified rate (18%)

All changes stated herein will be effective from 1st March 2015

In the following cases ED rate of 12% (till 28.2.15) is being increased to 18%:

Chapter Reference	Particulars	Notification passed on 1st March 2015
22	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored	9/2015-CE - refer note 1 below
39	Sacks & bags of polymers of ethylene	12/2015-CE - refer note 2 below

Note 1: Additional Excise Duty of 5% levied on these goods is being abolished.

Note 2: ED on sacks & bags of polymers of ethylene that are not for industrial use is being enhanced to 15% instead of 18%.

2.5 Specific ED rates enhanced for de-merit or economic goods

All changes stated herein will be effective from 1st March 2015

Chapter 24 that covers tobacco & its products, Chapter 25 heading 23 that covers Cement & Chapter 27 that covers petrol & diesel in all its forms have always been treated with a strong hand when it comes to levy & collection of excise duty. Budget 2015 is no exception.

Since the rates in these cases have been very specifically provided for as a unit measure & not ad valorem, a part of the increase in the rates is also on account of change in the peak rate of ED to 12.5% as stated above.

ED on Portland cement has been enhanced from Rs.900 per tone to Rs.1000 per tonne.

ED on cigarettes has been enhanced by nearly Rs.300 per 1000 sticks & on uncut tobacco from Rs.60 per kg to Rs.70 per kg.

ED on branded & unbranded petrol & diesel has been enhanced by approximately Rs.4 per litre.

2.6 Increase in Rate of Clean Energy Cess & duty on goods covered by Medicinal & Toilet Preparations Act (M & TP)

All changes stated herein will be effective from 1st March 2015

Clean energy cess is being levied and collected on several commodities. The said cess is being enhanced from Rs.100 per tonne to Rs.300 per tonne in the case of coal, lignite & peat. The rate for all the other goods covered will stand at Rs.200 per tonne from Rs.100 per tonne.

Goods covered by M & TP will now attract duty rate of 12.5% ad-valorem instead of the existing 12%.

2.7 ED rate Reduction

All changes stated herein will be effective from 1st March 2015

In the following cases reduction of ED has been prescribed by notification 12/2015-CE & 13/2015-CE dated 01.03.2015:

Chapter Reference	Particulars	Old Rate	New Rate
Chapter 33	All goods which are consumed within the factory of their production in the manufacture of Agarbatti	<i>Various Rates</i>	0%
Chapter 64	Leather footwear of Retail Sale Price of more than Rs.1000 with leather uppers	12%	6%
Chapter 84	Parts/sub parts, components & accessories for use in manufacture of tablet computers	12%	0%
Chapter 85	Wafers for use in the manufacture of IC modules for smart cards, subject to actual user condition	12%	6%
Chapter 85	All inputs for use in manufacture of LED driver MCPCB for LED lights and Fixtures & LED Lamps, subject to actual user condition	12%	6%
Chapter 86	Chassis for Ambulance subject actual user condition	24%	12.5%
Chapter 90	Following goods used in the manufacture of Pacemakers being battery, titanium, palladium wire, eutectic wire, silicone resins, silicone rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, steel coils & silicone tubing	12%	0%

3. Other Chapter Specific changes

The changes stated herein will come into effect from 1st March 2015.

Some of the other Chapter specific changes are as given hereunder:

3.1 ED on Prescribed Motor Vehicles and parts/accessories thereof (Notification 12/2015 dtd.1st March 2015 - Chapter 87)

Specified goods like battery packs/chargers, brake recovery systems, electric compressors, generators, motors, etc. used in the manufacture of Hybrid and Electrically Operated motor vehicles will continue to enjoy a lower ED of 6% till 31.3.16 instead of 31.3.15 as envisaged earlier.

3.2 MRP based ED Assessment introduced / amended in the following cases

All changes stated herein will be effective from 1st March 2015

In the following cases MRP based abatement rates are either being introduced or are being amended to a limited extent vide notification no.03/2015-CE dated 01.03.2015:

Chapter Reference	Particulars	Abatement Rate
Chapter 4	Condensed milk put in unit containers	30%
Chapter 21	Extracts, essences and concentrates of tea or mate and preparations with a basis of these extracts, essences and concentrates or with a basis of tea or mate	30%
Chapter 22	Water & Other non-alcoholic beverages not being fruit or vegetable juices	35%
Chapter 64	All footwear	25%
Chapter 85 / 94	All LED Lights or fixtures including LED Lamps other than lamps of automobiles	35%

4. Other Legislative Changes

4.1 Amendments to Central Excise Act, 1944

All changes stated herein will be effective from the enactment of the Finance Bill, 2015 (that is after the Bill becomes an Act on receiving assent from the President).

4.1.1 Rationalisation of Penalty Norms

The provisions of Section 11AC the Central Excise Act relating to penalties are being rationalized & incentivized as under so as to speed up the recoveries:

Excise duty payable on account of short levy, short payment or erroneous refund	Maximum Penalty Leviable	If duty, interest, penalty paid within 30 days of service of SCN	If duty, interest, penalty paid within 30 days of service of order	If duty, interest, penalty paid after 30 days of service of order
Where such payment is not arising on account of any willful misrepresentation, fraud or collusion	10% or Rs.5000 whichever is lower. No penalty in case duty is paid along with interest prior to issue of SCN	Nil	25% of the penalty determined	Maximum Penalty as levied in the order
Where such payment is arising on account of any willful misrepresentation, fraud or collusion but transaction recorded in	50% of duty amount	15% of the duty demanded in show cause	25% of the duty determined in the adjudication order	Maximum Penalty as levied in the order

<i>Excise duty payable on account of short levy, short payment or erroneous refund</i>	<i>Maximum Penalty Leviable</i>	<i>If duty, interest, penalty paid within 30 days of service of SCN</i>	<i>If duty, interest, penalty paid within 30 days of service of order</i>	<i>If duty, interest, penalty paid after 30 days of service of order</i>
the relevant records from 8.4.11 to the date on which assent to the Finance Bill, 2015 is accorded				
Where such payment is arising on account of any willful misrepresentation, fraud or collusion	100% of duty amount	15% of the duty demanded in show cause	25% of the duty determined in the adjudication order	Maximum Penalty as levied in the order

4.2 Amendments to Central Excise Rules, 2002

All changes stated herein will be effective from 01.03.2015.

4.2.1 Resident firms permitted for Advance Rulings

Applicants who can now take advantage of the Advance Rulings under Central Excise has been expanded to include Resident Firms. Section 23A(iii) stands expanded to that extent. A resident firm will cover partnership firms covered by the Indian Partnership Act, 1932, Limited Liability Partnerships covered by the LLP Act, 2008, sole proprietorship concerns, One Person company legislated by the Companies Act, 2013. In order to qualify as such, the said entities must be resident for the purpose of the Income Tax Act, 1961.

4.2.2 Benefit of Direct dispatch to customers or job workers

In order to remove unwanted administrative glitches & unwarranted costs the Government has permitted direct dispatches of excisable goods to the premises of the customers of registered dealers & registered importers without the prior requirement of having to bring the goods first to the place of removal for dispatch.

Similar move is being made in case of dispatch of inputs and capital goods directly to the job workers of registered manufacturers & providers of output services.

In order to check the evasion of duty or duty jumping, the said assessees, before or in the course of taking advantage of this permit, will have to fulfill certain conditions as envisaged in Rule 11 of the Central Excise Rules, 2002.

4.2.3 Late fee for delayed submission of return by 100% EOU for clearances to DTA

Where an EOU has cleared goods to the Domestic Tariff Area, it shall be required to file an electronic return in accordance with Rule 17(3) of the Central Excise Rules, 2002. In case such electronic return is not filed within 10 days from the end of the relevant month, the unit shall be liable to a late fee of Rs.100 per day till the default is cleared or Rs.20000 whichever is less.

4.2.4 Excise Registration Process Simplified

Excise registrations are sought to be granted within 2 working days from the date of online application. Document verification process will now be a post facto exercise. Premises verification will also be carried out but post granting the registration.

With this it is important to note that the registration granted to the unit can be cancelled by the concerned officer where the premises is non-existent, where there substantial mis-declaration in the application form, where the assessee does not respond to the officers call for errors in application within 15 days from premise visit & where the factory is closed with no further outstanding dues.

It is also pertinent to note that there will be no need for a signed Registration Certificate to initiate compliances like E payment by the assessee. A registration certificate that is obtained online is sufficient for the purpose.

5. Conclusion

The FM in his budget speech has announced the enactment of GST (Goods & Services Tax) by 1st April 2016. The chunky allocation to the States is clear indication that ice seems to have finally broken between the Centre and the States. With the view to making India an unified single market, GST will be a move in just the right direction as one tries to promote 'Make in India'.



PART IV - CUSTOMS
EXECUTIVE SUMMARY

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Given herein are changes, amendments and new trends in Duties of Customs & allied levies.

1. Rate of Customs Duty

No change is proposed in the peak rate of customs duty of 10 per cent on non-agricultural goods. Barring a few specific items, the rates below the peak are also being retained.

2. Chapter wise view of the Customs Duty rates

There are no changes in the rate of Customs Duty on goods covered by Chapters 1 to 24, 31 to 71, 75, 77 to 80, 82 to 83, 86, 88 & 89, 91 to 98 of the Customs Tariff.

There are some exceptions / amendments / enhancements / reductions made in relation to some of the goods covered by the remaining Chapters. It must be borne in mind the changes are only in relation to the said goods and the Duty structure on remaining goods falling in such Chapters will remain unchanged and as they were prior to such goods specific amendments.

All the changes herein stated will be effective from 1st March 2015.

Please note abbreviations used:

BCD – Basic Import Duty

ED – Basic Export Duty

CVD – Countervailing Duty

SAD – Special Additional Duty

2.1 Abolition of Education & Higher Education Cess

Vide Finance Act, 2004 & Finance Act, 2007 the Government notified Education & Higher Education Cess ('EC & SHC') that was required to be levied on the excise duty computed. With the subsumation of the said EC & SHC in the peak rate of excise duty itself no Cess will be leviable on the CVD (countervailing duty) component anymore.

2.2 Duty Reduction or Exemption

In the following cases either an exemption or reduction of Duties has been granted:

The changes stated herein will come into effect from 1st March 2015.

Some of the other Chapter specific changes are as given hereunder:

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.2015	New Rate	Old Rate
25	Ulexite ore	BCD	10/2015	0%	2.50%
26	Ilmenite, upgraded (beneficiated ilmenite including ilmenite ground)	ED	8/2015	2.50%	5%
27	Bituminous Coal	BCD	Clause 89 of Finance Bill, 2015	10%	55%
27	Liquefied Butanes covered by CTEH 2711 13 00	BCD	10/2015	2.50%	5%
27	Naphtha covered by CTEH 2710 for use in manufacture of excisable goods	SAD	11/2015	2%	4%
28	Sulphuric acid covered by CTEH 2807 00 10 used for the manufacture of fertilizers	BCD	10/2015	5%	7.50%
29,30	Isoprene covered by CTEH 29012400	BCD	10/2015	2.50%	5%

Part IV Customs

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.201 5	New Rate	Old Rate
29,30	Styrene covered by CTEH 2902 50 00, ethylene dichloride (EDC) covered by CTEH 2903 15 00 and Vinyl Chloride Monomer (VCM) covered by CTEH 2903 21 00	BCD	10/2015	2%	2.50%
29,30	Anthraquinone covered by CTEH 2914 61 00	BCD	10/2015	2.50%	7.50%
29,30	Butyl acrylate covered by CTEH 2916 12 10	BCD	10/2015	5%	7.50%
29,30	Styrene covered by CTEH 2902 50 00, ethylene dichloride (EDC) covered by CTEH 2903 15 00 and Vinyl Chloride Monomer (VCM) covered by CTEH 2903 21 00 for use in manufacture of excisable goods	SAD	11/2015	2%	4%
74,76	Melting scrap of iron or steel, stainless steel scrap for the purpose of melting, copper scrap, brass	SAD	11/2015	2%	4%

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.201 5	New Rate	Old Rate
	scrap and aluminum scrap				
81	Antimony metal covered by CTEH 8110 10 00 and antimony waste and scrap covered by CTEH 8110 20 00	BCD	10/2015	2.50%	5%
84	C-Block Compressor covered by CTEH 8414 90 11, Crank Shaft covered by CTEH 8414 90 11 and Over Load Protector (OLP) & Positive thermal coefficient covered by 8536 20 90 for use in the manufacture of Refrigerator compressors	BCD	10/2015	5%	7.50%
84	Specified components covered by CTEH 8537 10 00 of CNC Lathe machines and Machining Centres, namely Ball screws covered by CTEH 8483 40 00, Linear	BCD	10/2015	2.50%	7.50%

Part IV Customs

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.201 5	New Rate	Old Rate
	Motion Guides covered by CTEH 8466 93 90 and CNC Systems				
84	Ceria Zirconia compounds covered by CTEH 2825 60 20, cerium compounds covered by CTEH 2846 10 90 and zeolite covered by CTEH 3824 90 90	BCD	10/2015	5%	7.50%
84	Evacuated tubes with three layers of solar selective coating for use in the manufacture of solar water heater and system, subject to actual user condition.	BCD	10/2015	0%	
84	Parts, components and accessories for use in the manufacture of tablet computer.	BCD, CVD & SAD	10/2015	0%	

Part IV Customs

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.201 5	New Rate	Old Rate
85	AEC (Active Energy Controller) for manufacture of Renewable Power System (RPS) inverters, subject to certification by the Ministry of New & Renewable Energy	BCD	10/2015	5%	
85	High Density Polyethylene (HDPE) for manufacture of telecommunicati on grade optical fibers or optical fiber cables.	BCD	10/2015	0%	
85	Water Blocking Tape, Ethylene-propylene-non-conjugated diene rubber (EPDM) and Mica glass tape for use in the manufacture of insulated wires and cables (except sub-heading 8544 11), subject to actual user condition.	BCD	10/2015	7.50%	10%

Part IV Customs

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.201 5	New Rate	Old Rate
85	Metal parts for use in manufacture of electrical insulators, subject to actual user condition.	BCD	10/2015	7.50%	10%
85	Digital Still Image Video Cameras capable of recording video with minimum resolution of 800x600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single sequence, using the maximum storage (including the expanded) capacity.	BCD	10/2015	0%	10%
85	Parts and components for use in manufacture of such digital cameras	BCD	10/2015	0%	5%
85	Organic LED (OLED) TV panels	BCD	10/2015	0%	10%
85	Black Light Unit Module also for manufacture of LCD/LED TV panels, subject to actual user	BCD	10/2015	0%	10%

Part IV Customs

Ch. No.	Description	Duty Type	Notificati on No. as passed on 01.03.201 5	New Rate	Old Rate
	condition.				
85	Magnetron (upto 1 KW) used for the manufacture of domestic microwave oven.	BCD	10/2015	0%	5%
85	All goods [except populated PCBs] for use in the manufacture of ITA bound goods covered by	SAD	11/2015	0%	4%
85	All inputs for use in the manufacture of LED driver and MCPCB for LED lights and Fixtures & LED Lamps, subject to actual user condition.	SAD	11/2015	0%	4%
90	inputs for use in the manufacture of flexible medical video endoscope	BCD	10/2015	2.50%	5%
90	Artificial hearts (left ventricular assist device).	BCD ,CVD	Reduced	0%	
90	Specified raw materials for use in the manufacture of pacemakers, subject to actual user condition.	CVD	Reduced	0%	

INSPIRATION PILL

Winston Churchill

Success is going from failure to failure without a loss of enthusiasm.

Theodore Roosevelt

Whenever you are asked if you can do a job, tell 'em, 'Certainly, I can!' Then get busy and find out how to do it.

Anonymous

There is less to fear from outside competition than from inside inefficiency, discourtesy and bad service.

J.C. Penney

I am grateful for all my problems. I became stronger and more able to meet those that were still to come.

Best Regards

CA.Ashwin K.Shah

CA.Shrenik A.Shah