HSA ADVOCATES

HEMANT SAHAI ASSOCIATES

UNION BUDGET 2016-17

Analysis of Tax Proposals

From the Editor's Desk

Dear Reader,

Union Budget 2016-17 was perceived as one of the most challenging Budgets for this Government considering the Global economic crisis and the gloomy Indian stock market. Also having spent close to 3 years in power and after having announced two Budgets in the past, and having faced reversals in elections in the States, the Government was faced with the task of making a choice between a people friendly budget versus a development budget.

In the above backdrop, the Hon'ble Finance Minister presented the Union Budget 2016-17. From an overview, it would appear to be a Budget with a populist tilt since huge allocations have been made for agriculture, Rural and Social sectors. Add to this, the implementation of the 7th Pay Commission and the One Rank One Pension ("OROP") scheme would result in huge burden on the exchequer. Having said this, the Budget did not lose sight of the development agenda of the present Government and did make various pro-development announcements too.

The Budget emphasized on the following major issues toward growth and development viz.:

a) Infrastructure
b) Ease of doing business in India
c) Make in India

On the tax proposals, one of the biggest let down was that there was no cut on the corporate tax, as promised in the last Budget, and the tax rate continued to be 30 per cent plus surcharge plus cess. Though some relief in tax rates was given to start ups and small businesses. MAT continued to be levied. There has been no tinkering with the Indirect tax rates (viz Excise duty, Customs duty and Service tax).

The Hon’ble Minister also effectively dealt with huge backlog of litigation by announcing dispute resolution mechanisms in both direct and indirect tax space, which would result in bringing down the pendency considerably. On retroactive taxation, the Hon’ble Minister reiterated his promise not to resort to such retro tax. Tax amnesty scheme have been announced to disclose past undisclosed assets and pay tax thereon.

The Budget also reiterated the Government’s commitment to push for and pass the Goods & Service Tax law, Bankruptcy law etc.

On the Fiscal discipline, the Finance Minister made a bold move of sticking to his previous Budget estimates of curtailing fiscal deficit to 3.9 per cent GDP for 2015-16 and to 3.5 per cent of GDP for the year 2016-17. This despite the present Global crises, which has a direct bearing on India’s economic growth.

To sum up, the Budget is definitely a positive and a pragmatic step towards India’s economic growth and development.

We have brought out the salient features of the Budget and the tax proposals (both Direct and Indirect tax). We hope the presentation would be informative and an interesting read.

We look forward to hear your comments on this publications!

Nand Kishore
Partner-Taxation

TABLE OF CONTENTS

ECONOMIC SURVEY REPORT – GROWTH HIGHLIGHTS 7

BUDGET HIGHLIGHTS 8

Boost to Infrastructure 8

Road projects 8

Railways 8

Ports 8

Other infrastructure projects 8

Public Private Partnership (PPP) projects -New Initiatives 9

Financial sector reforms 9

Ease of doing business 9

Fiscal discipline 10

Export promotion 10

DIRECT TAXES 11

Rate of Taxes 11

Personal tax 11

Corporate tax 11

Taxation of Dividend Income 11

Tax on Distributed Income to shareholder 11

Tax Collection at Source 12

Capital expenditure deduction 12

Amendment in Section 10 12

Amendment in Section 32 12

Taxation of Income from Patents 13

Presumptive tax scheme for professionals 13

MAT not applicable to Foreign companies 13

Tax Incentives to International Financial Services Centre 14

Income Declaration Scheme 14

Amendment to Section 194LBB 14

Long Term Capital Gain benefit for unlisted shares 14

Amendments in Tax Deduction at Source 15

Amendment in Section 50C 16

Reporting of International group 16

Equalisation levy 16

Amendment in Section 206AA 16

Taxation of Non-compete fees 17

The Direct Tax Dispute Resolution Scheme, 2016 17

INDIRECT TAXES *18*

SERVICE TAX 18

Rate of Tax 18

New Taxes 18

Rate of Interest 18

Proposed Legislative Amendments 18

Services excluded from the Negative List 19

Declared Services 19

Exemptions granted 20

With retrospective effect 20

With effect from 1st March, 2016 21

With effect from 1st June, 2016 21

Exemptions withdrawn 22

With effect from 1st March, 2016 22

Amendment under Reverse Charge Mechanism 22

Abatements 22

Other changes 23

Indirect Tax Dispute Resolution Scheme 23

CUSTOMS 25

Proposed Legislative Amendments 25

The Customs Act, 1962 25

Make in India initiatives 25

Reduction in customs duty on inputs to boost manufacturing 25

Withdrawal of exemption / enhancement of rates – To discourage imports and encourage domestic growth 26

CENTRAL EXCISE 28

Proposed Legislative Amendments 28

Changes in the rate of excise duty 28

RSP Valuation goods 29

Infrastructure Cess 29

CENVAT Credit Rules 31

Amendment in Definitions 31

Amendment regarding availment and utilization of Cenvat Credit 31

Calculation of credit attributable to exempted goods or services 32

Input service distributor 33

Distribution of credit on inputs 34

Returns 34

Central Sales Tax 34

GLOSSARY OF TERMS 35

ECONOMIC SURVEY REPORT – GROWTH HIGHLIGHTS

Before embarking on to the Budget proposal it would be beneficial to take a glance at India's growth performance since the last financial year

- GDP has grown from 7.2 per cent (2014-15) to 7.6 per cent (2015-16). Long run potential GDP growth pegged at 8-10 per cent
- Manufacturing growth 5.5 per cent (2014-15) to 9.5 per cent (2015-16)
- CPI inflation down to 5.4 per cent
- Forex reserves as in February 2016 is USD 351.5 bn
- Forex reserve growth USD 27.7 bn (April 2015 – December 2015) versus 21.9 bn (April 2014- December 2014)

BUDGET HIGHLIGHTS

Boost to Infrastructure

Road projects

- Expenditure towards development of highways to be INR 55,000 crores. NHAI to be allowed to raise additional funds through bonds of INR 15,000 crore.
- Expenditure by Government towards development of rural roads at INR 27,000 crores.
- Total capital expenditure on road development by the Government is pegged at INR97,000 crores
- Government to approve 10,000 km of National Highways in 2016-17
- Upgradation of State Highways of 50,000 km to National Highways to be taken up.

Railways

- The total budgetary allocation towards development and modernization of Indian railways is at INR 121,000 crores

Ports

- Modernization and development of the existing ports.
- Development of green field ports both in the eastern and western coasts of India

Other infrastructure projects

- Civil Aviation sector, the Government proposes to partner with State Government for revival of unserved and underserved airports in India.
- Oil and Gas exploration and discovery space, the Government proposes to incentivize gas production from dep water, ultra deep water and high pressure high temperature areas.

Public Private Partnership (PPP) projects -New Initiatives

- A Public Utility (Resolution of Disputes) Bill to be introduced in 2016-17 to institutionalise resolution disputes in infrastructure related construction contracts, PPP and public utility contracts;
- Guidelines for renegotiation of PPP Concession Agreements will be issued due to long term nature of such contracts and potential uncertainties of real economy in a transparent manner
- A new credit rating system for infrastructure projects which give emphasis to various in-built credit enhancement structures will be developed, instead of relying upon a standard perception of risk which often result in mispriced loans

Financial sector reforms

- Public sector banks facing stressed assets would be supported by infusion of INR 25,000 crores towards recapitalization of such banks.
- Code on Resolution of Financial Firms to be introduced in the Parliament during 2016-17 to provide for specialized resolution mechanism do deal with bankruptcy situations in banks and insurance companies etc.
- RBI Act 1934 is proposed to be amended and provide for Monetary Policy Framework and a Monetary Policy Committee to add value and transparency to monetary policy decision.
- Financial Data Management Centre to be set up to facilitate integrated data aggregation and analysis in the financial sector.
- Amendments to SARFAESI Act 2002 to enable the sponsor of an ARC to hold up to 100 per cent stake in the ARC and permit non-institutional investors to invest in Securitization receipts.

Ease of doing business

- Amendment proposed to the Companies Act, 2013 to ensure registration of companies in one day

Fiscal discipline

- Fiscal deficit for 2015-16 3.9 per cent of GDP and fiscal deficit for 2016-17 at 3.5 per cent of GDP
- Total expenditure projected Rs. 19.78 lakh crore, Planned expenditure Rs. 5.5 lakh crores and non- planned expenditure Rs.14.28 lakh crores

Export promotion

- Drawback scheme has been widened and deepened to include more products and Countries.

DIRECT TAXES

Rate of Taxes

Personal tax

- Income tax rate for individuals remain unchanged.
- Surcharge has been increased to 12 per cent in case income exceeds one crore of individuals, Co-operative Societies, Firms, Local authorities etc.

Corporate tax

- In case of newly setup domestic companies engaged in the business of manufacture or production of article or thing, rate of income tax will be 25 per cent plus surcharge plus cess subject to the conditions defined
- In case of domestic companies, whose total turnover for the year 2014-15 does not exceed 5 crores, rate of income tax reduced to 29 per cent plus surcharge plus cess.
- Tax for other domestic companies maintained at 30 per cent plus surcharge plus cess.
- Surcharge on domestic companies has been increased to 7 per cent in case total income exceeds one crore but not exceeding ten crores and 12 per cent in case total income exceeds ten crores.
- Minimum Alternative Tax retained

Taxation of Dividend Income

- The income by way of dividend in excess of INR 10 lakh made chargeable to tax in the hands of recipient in case of an individual, HUF or a firm who is resident in India, at the rate of 10 per cent in addition to the dividend distribution tax. Effective from 1st April 2017.

Tax on Distributed Income to shareholder

- Section 115QA has been amended to provide that the provisions of this section will be applicable to any mode of buy back of unlisted share undertaken by the company in accordance with the provisions of the law relating to the Companies and will not be necessarily restricted to section 77A of the Companies Act, 1956. Effective from 1st June 2016.

Tax Collection at Source

- Seller to collect the tax at the rate of 1 per cent from the purchaser on sale of motor vehicle of the value exceeding INR 10 lakh
- Seller of any goods (other than bullion and jewellery), or for provision of any services (other than payments on which tax is deducted at source under Chapter XVII-B) exceeding INR 2 lakh.
- Effective from 1st June 2016.

Capital expenditure deduction

- 100 per cent deduction of capital expenditure made by a Company registered in India or consortium of such companies or authority or board or corporation or any other body established under the Central or State Act, which enters into an agreement with Central or State Government or local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining new infrastructural facility viz.:
  - Road, bridge, rail system
  - Highway project
  - Water supply project, water treatment plant, irrigation project
  - Port, airport, inland waterway, inland port or navigational channel in the sea

Amendment in Section 10

- Section 10 has been amended to provide that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income subject to fulfilment of conditions. Effective retrospectively from 1st April 2016.

Amendment in Section 32

- Section 32(1)(iia) has been amended to provide that the business of transmission of power shall also be allowed additional depreciation at the rate of 20 per cent of actual cost of new machinery or plant acquired and installed in a previous year. Effective from 1st April 2017.

- Accelerated depreciation rate restricted from 100 per cent of block of assets to 40 per cent

Taxation of Income from Patents

- New section 115BBF has been inserted to provide that where the total income includes any income by way of 'royalty' in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10 per cent (plus applicable surcharge and cess). While computing the royalty income, no expenditure or allowance is to be allowed. Effective from 1st April 2017.

Presumptive tax scheme for professionals

- The threshold limit for presumptive taxation scheme for persons having income from eligible business has been increased from one crore to two crore.
- New section 44ADA has been inserted wherein presumptive taxation scheme is also allowed to professionals at a sum equal to 50 per cent of the receipts whose total gross receipts does not exceed INR 50 lakh in a previous year. Effective from 1st April 2017.

MAT not applicable to foreign companies

- Income-tax Act has been amended to provide that with effect from 01.04.2001, the provisions of section 115JB will not be applicable to a foreign company if
  - the company is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the company does not

Simplification and rationalisation of Tax

- *The government has already accepted many recommendations of Tax Administration Reform Committee and I propose to accept a number of recommendations of Justice Easwer Committee in this Budget.*
- *To reduce the multiplicity of taxes, associated cascading and to reduce cost of collection, I propose to abolish 13 cesses, levied by various ministries in which revenue collection is less than 50 crore in a year.*

have a permanent establishment in India in accordance with the provisions of such Agreement; or

- the company is a resident of a country with which India does not have an agreement of the nature referred to in above clause (i) and the company is not required to seek registration under any law for the time being in force relating to companies.

Tax Incentives to International Financial Services Centre

- Section 115JB has been amended to provide that in case of a company, being a unit located in International Financial Services Centre and deriving its income solely in convertible foreign exchange, the Minimum Alternate Tax shall be chargeable at the rate of nine per cent.
- Further, Section 115-O has also been amended to provide that no tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre. Effective from 1st April 2017.

Income Declaration Scheme

- A new amnesty scheme have been introduced for those having unaccounted money to come forward themselves and declare their undisclosed income by paying 45 per cent of such income subject to the conditions specified. Effective from 1st June 2016 and applicable in respect of any financial year up to 2015-16.

Amendment to Section 194LBB

- The person (investment fund) responsible for making the payment to the investor will have to deduct income-tax at the rate of ten per cent where the payee is a resident and at the rates in force where the payee is a non-resident (not being a company) or a foreign company. Effective from 1st June 2016.

Long Term Capital Gain benefit for unlisted shares

- Section 112(1)(c)(iii) amended to provide for income tax on long term capital gains arising from transfer of unlisted shares of a closely held company by a non-resident or a foreign companies at the rate of 10 per cent on the capital gains in respect of such shares. Effective from 1st April 2017.

Amendments in Tax Deduction at Source

Section	Heads	Existing Limit	Proposed Limit
192A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winnings from Horse Race	5,000	10,000
194C	Payments to Contractors	75,000	1,00,000
194LA	Payment of Compensation on acquisition of certain Immovable Property	2,00,000	2,50,000
194LD	Insurance commission	20,000	15,000
194G	Commission on sale of lottery tickets	1,000	15,000
194H	Commission or brokerage	5,000	15,000
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission	10%	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%
194K	Income in respect of Units	To be omitted w.e.f 01.06.16	
194L	Payment of compensation on acquisition of Capital Asset	To be omitted w.e.f 01.06.16	

Effective from 1st April 2016.

Amendment in Section 50C

- Section 50C has been amended to provide that that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. Also, this provision shall apply only in a case where the amount of consideration or a part thereof, has been paid through proper banking channel on or before the date of the agreement for the transfer of such immovable property. Effective from 1st April 2017.

Reporting of International group

- In compliance with the Base Erosion Profit Shifting (BEPS) provisions of the OECD, Section 285BA has been enacted requiring every constituent entity resident in India shall furnish a report in respect of the International group to the prescribed authority. The report would inter alia include information in respect of the amount of revenue, profit or loss before income tax, amount of income tax paid, amount of income tax accrued, number of employees, tangible assets etc. with regards to each country or territory in which the group operates.

Equalisation levy

- Equalisation levy of 6 per cent to be charged in respect of payments made by a resident to a non-resident, not having a permanent establishment in India, in respect of services pertaining to online advertisement, provision for digital advertising space etc., provided that the aggregate amount of consideration exceeds one lakh rupees.

Amendment in Section 206AA

- Section 206AA has been amended whereby payments made to non-residents or a foreign company would not be subject to higher withholding of 20 per cent only on the ground that the non-resident or foreign company does not have PAN. Effective from 1st June 2016.

Taxation of Non-compete fees

- Section 28 (va) has been amended to bring the non-compete fee in relation to not carrying out any profession, within the scope of the charging section of profits and gains of business or profession. Further, the proviso has been amended to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head capital gains would not be taxable as profits and gains of business or profession. Accordingly, Section 55 has been amended to provide that the 'cost of acquisition' and 'cost of improvement' for computing the capital gains on capital receipts arising out of transfer of right to carry on any profession shall also be taken as 'NIL'.

The Direct Tax Dispute Resolution Scheme, 2016

- In order to provide relief to the taxpayers, the government has proposed one time resolution of cases pending due to retrospective amendment of tax laws, by asking companies to pay the basic tax demand and get waiver for interest and penalty subject to the conditions specified therein. No penalty will be levied for Income-tax cases with disputed tax up to INR 10 lakh. Cases with disputed tax exceeding INR 10 lakh will be subjected to only 25 per cent of the minimum of the imposable penalty. Any pending appeal against a penalty order can also be settled by paying 25 per cent of the minimum of the imposable penalty. Also, certain categories of persons have been listed who are not eligible to apply for this resolution scheme.

INDIRECT TAXES

SERVICE TAX

Rate of Tax

- There is no change in the rate of service tax

New Taxes

- Enabling provision is incorporated in the Finance Bill, 2016 to empower the government to impose Krishi Kalyan Cess with effect from 1st June, 2016 as service tax on all or any of the taxable services at the rate of 0.5 per cent on the value of such services for the purpose of financing and promoting initiatives to improve agriculture

Rate of Interest

Section	Condition	Rate of interest
73B	Interest on amount collected in excess	15%
73B	Interest on amount collected in excess for service provider where taxable turnover is less than 60lakhs	12%
75	Interest on delayed payment of service tax	15%
75	Collection of any amount as service tax but failing to pay the amount so collected to the cred if the CG in or before the date on which such payment becomes due.	24%

Proposed Legislative Amendments

- Section 67A is proposed to be amended to obtain specific rule making power in respect of Point of taxation Rules, 2011. Point of taxation Rules, 2011 is being amended accordingly. The amendment will come into force with effect from the date of enactment of the Finance Bill, 2016

- Normal period of limitation to issue show cause notice or initiate proceeding with respect to recovery of tax under Section 73 of the Finance Act, 1994 in case of tax not levied or paid or short levied or short paid or erroneously refunded is proposed to be extended from 18 months to 30 months. The amendment will come into force with effect from the date of enactment of the Finance Bill, 2016
- Section 75 of the Finance Act, 1994 is proposed to be amended to charge interest at the rate of 24 per cent p.a where a person collects any amount as service tax but fails to deposit the amount to the credit of Central Government. The amendment will come into force with effect from the date of enactment of the Finance Bill, 2016
- It is proposed that the penalty proceedings under Section 78A against the directors etc. of a company shall be deemed to be concluded in cases where the main demand and penalty proceedings have been concluded in terms of Section 76 or Section 78 of the Finance Act, 1994. The amendment will come into force with effect from the date of enactment of the Finance Bill, 2016
- Section 90 and 91 are proposed to be amended to restrict the power of arrest only in situations where the tax payer has collected tax but not deposited it with the exchequer, and the amount of such tax collected exceeds Rs. 2 crore.

Services excluded from the Negative List

- Service of transportation of passengers with or without accompanied belongings by a stage carriage w.e.f 1st June, 2016
- Service by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India w.e.f 1st June, 2016.

Declared Services

- Services by way of assignment by the Government of the right to use the radio frequency spectrum and subsequent transfers thereof.

Exemptions granted

With retrospective effect

- Services provided during the period 1st July 2012 to 29th January, 2014 to an authority, board or any other body set up by an Act of Parliament of State legislature or established by Government with 90 per cent or more equity control to carry out any function entrusted to municipality under Section 243W of the Constitution, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works. Tax paid can be refunded provided refund application is filed within 6 months from the date of enactment of Finance Bill 2016.
- Services provided during the period 1st April, 2015 to 29th February, 2016 to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

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

  (*b*) a structure meant predominantly for use as—

  (*i*) an educational establishment;

  (*ii*) a clinical establishment; or

  (*iii*) an art or cultural establishment;

  (*c*) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in *Explanation* 1 to clause (*44*) of section 65B of the said Act, under a contract entered into before the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date. Tax paid can be refunded provided refund application is filed within 6 months from the date of enactment of Finance Bill 2016
- Services provided during the period 1st April, 2015 to 29th February, 2016 by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the

condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st March, 2015. Tax paid can be refunded provided refund application is filed within 6 months from the date of enactment of Finance Bill 2016

- Notification no. 41/2012-ST dated 29th June, 2012 was amended vide notification no. 1/2016-ST dated 3rd February, 2016 so as to inter alia allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for export of the said goods. It is now proposed that the said amendment is to be given retrospective effect w.e.f 1st July, 2012. The application for such refund shall be filed within one month from the date of enactment of FB, 2016.

With effect from 1st March, 2016

- Services provided by IIM’s by way of 2 year full time Post Graduate Programme in Management(PGPM) for which admissions are conducted through CAT, 5 year Integrated Programme in Management and Fellowship Programme in Management
- Services provided in relation to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of, to the government, local authority or a governmental authority, in specified condition under a contract entered into prior to 1st March, 2015 and the stamp duty on which has been paid prior to such date.
- Services by way of construction, erection, commissioning or installation of original works contract, for low cost houses up to a carpet area of 60 sq.mt. per house in a housing project approved by the competent authority.
- Services by way of construction, erection, commissioning or installation of original works contract, for airport or ports under a contract entered into prior to 1st March, 2015, wherein the stamp duty is paid prior to such date.

With effect from 1st June, 2016

- The services by a stage carriage other than an air conditioned stage carriage.
- Services provided by way of transportation of goods by an aircraft from a place outside India up to the customs station in India.

Exemptions withdrawn

With effect from 1st March, 2016

- Exemption is withdrawn in relation to services by way of construction, erection, commissioning or installation of original works contract, for monorail and metro, except wherein the contracts were entered into before 1st March 2016, on which stamp duty is paid, shall remain exempt.

Amendment under Reverse Charge Mechanism

- Services provided by a mutual fund agents/distributors to an asset management company is brought under forward charge w.e.f 1st April, 2016. Accordingly, Rule 2(1)(d)(EEA) of the service tax rules is being deleted along with consequential changes in notification no. 30/2012-ST.
- Services provided by a senior advocate is brought under forward charge w.e.f 1st April, 2016

Abatements

- Service tax on transport of goods by rail is retained at 30 per cent of the value of such service with cenvat credit of input services for the said service.
- Service tax on Transport of goods in containers by rail by any person other than Indian Railways, shall be payable on the 40 per cent of the value of such service w.e.f 1st April 2016 with cenvat credit of input services for the said service.
- Service tax on Transport of passengers with or without accompanied belongings by rail and transport of goods in vessel is retained at 30 per cent of the value of such services w.e.f 1st April, 2016 with Cenvat credit of inputs services for the said services.
- Service tax on for transport of passenger, with or without accompanied belonging, by a stage carriage, shall be payable on 40 per cent of the value of such service w.e.f 1st June, 2016 without cenvat credit on inputs, input services and capital goods.
- Services tax on services of arranging or booking accommodation provided by a tour operator shall be payable on 10 per cent of the value of such services w.e.f. 1st April, 2016 provided that the invoice issued shall indicate that it is towards the charges for such accommodation

and shall not be eligible where the invoice includes only the service charges for arranging or booking accommodation for any person but does not includes the and not the cost of such accommodation.

- Service tax on services provided by a tour operator including packaged tour shall be payable at 30 per cent of the value of such services w.e.f 1st April, 2016 provided that the invoice issued shall indicate that it is inclusive of charges for such a tour and the amount charges in the bill is the gross amount charges for such a tour.
- Service tax on services provided by a way of construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where the entire consideration is received after issuance of completion certification by the Competent authority shall be payable at 30 per cent of the value of such services w.e.f 1st April, 2016 with credit on input services and capital goods.

Other changes

- The benefits of quarterly payments is extended to one person company and HUF having aggregate taxable turnover up to fifty lakh rupees. Further, one person company with the aggregate taxable turnover of fifty lakhs is also granted the benefit of payment of tax on receipt basis which are available to individual and proprietary firm or partnership firm w.e.f 1st April, 2016.
- Specified assesse are required to file annual returns on or before 30th November of succeeding financial year. Non filing of such annual return will attract penalty of Rs. 100 per day of default up to a maximum of twenty thousand rupees. Further, such returns can be revised within one month from the last date of submission of the said return.

Indirect Tax Dispute Resolution Scheme

- The scheme is introduced to conclude cases pending before the Commissioner (Appeals), wherein the aseessee after paying the duty along with interest and 25 per cent of the penalty imposed in the impugned order can file a declaration between 1st June 2016 to 31st December, 2016 and the proceeding against the assese shall be closed and impunity from prosecution will be granted. However, the scheme will not apply to cases where –

   - the impugned order is in respect of search and seizure proceeding; or prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or
   - the impugned order is in respect of narcotic drugs or other prohibited goods; or
   - impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
   - any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.
- Any amount paid in pursuance of a declaration made under sub-section (1) of section 211 shall not be refunded.
- Any order passed under section 21(4) shall not be deemed to be an order on merits and has no binding effect.

CUSTOMS

Proposed Legislative Amendments

The Customs Act, 1962

- That a new section 58A has been inserted which provides for licensing of special warehouses for storing dutiable goods and shall be under the physical control of the proper officer of customs. That no person shall enter the warehouse or remove any goods without permission of the proper officer.
- Section 28 has been amended so as to enhance the normal period of limitation from one year to two year for issuance of show cause notice in cases not involving fraud, suppression of facts, wilful mis-statement etc.
- Section 47 and 51 has been amended and a proviso is been inserted which enables certain class of importers and exporters to make deferred payment of duty or any charges.
- Section 61 has been substituted so as extend the period of warehousing to all goods used by Export Oriented Undertakings, Units under Electronic Hardware Technology Parks, Software Technology Parks, Ship Building Yards and other units manufacturing under bond. Further, such goods shall be permitted to remain in the warehouse in which they are deposited or in any warehouse to which they may be removed without any time limit. However, in case of any other goods not used by the above entities, the time limit for warehousing shall be one year which may be extended thereafter for a period of not more than one year at a time by the Principal Commissioner of Customs or Commissioner of Customs.
- Section 59 relating to warehousing bond is amended whereby the value of bond to be executed has been increased from two times to three times the amount of duty assessed.

Make in India initiatives

Reduction in customs duty on inputs to boost manufacturing

- Basic Customs Duty (BCD) on Polypropylene granules/resins falling under Chapter heading 3902 for the manufacture of Capacitor Grade Plastic Films is being reduced from 7.5 per cent to Nil, subject to actual user condition.

- BCD on wood in chips or particles for manufacture of paper, paperboard and news print falling under Chapter 44 is being reduced from 5 per cent to Nil subject to actual user condition.
- BCD on specified fibres, filaments/yarns falling under chapter heading 54 and 55 is being reduced from 5 per cent to 2.5 per cent.
- Exemption from BCD is being withdrawn on solar tempered glass/solar tempered (anti-reflective coated) glass for use in manufacture of solar cells/modules/panels falling under chapter 70 and these goods will now attract 5 per cent BCD subject to actual user condition.
- Exemption from BCD is being withdrawn on preform of silica falling under chapter 70 for use in manufacture of telecommunication grade optical fibre/cable and these goods will attract BCD of 10 per cent.
- BCD and SAD are being exempted on machinery, electrical equipment, other instruments and their parts (except Populated Printed Circuit Boards) falling under Chapter 84, 85, 90 for fabrication of semiconductor wafer and liquid crystal display (LCD) subject to actual user condition.
- BCD and SAD are being exempted on machinery, electrical equipments, other instruments and their parts (except populated PCBs) falling under chapter 84, 85, 90 for assembly, testing, marking and packaging of semiconductor chips (ATMP) subject to actual user condition.
- BCD and CVD are being exempted on inputs and parts for manufacture of charger/adapter, battery and wired headsets/speakers of mobile handsets including cellular phone and inputs and sub-parts for use in manufacture of arts of charger/adapter, battery and wired headsets/speaker.
- The validity period of exemption granted to specified goods for use in the manufacture of electrically operated vehicles and hybrid vehicles is being extended without time limit.

Withdrawal of exemption / enhancement of rates – To discourage imports and encourage domestic growth

- Exemption on plans, drawing and designs falling under chapter 49 is being withdrawn and such goods now attract 10 per cent BCD.
- CVD exemption on specified machinery required for construction of roads is being withdrawn.

- BCD on industrial solar water heater falling under chapter heading 8419 19 20 is being increased from 7.5 per cent to 10 per cent. BCD of 7.5 per cent is being retained on other water heaters (with other than solar heating source) falling under 8419 19 20.
- BCD, CVD and SAD exemptions are being withdrawn on charger/adapter, battery and wired headsets/speakers for use in manufacture of mobile handsets including cellular phone.
- BCD on golf cars falling under chapter heading 8703 is being increased from 10 per cent to 60 per cent.

CENTRAL EXCISE

Proposed Legislative Amendments

- Section 11A has been amended so as to enhance the normal period of limitation from one year to two years for issuance of show cause notice in cases not involving fraud, suppression of facts, wilful mis-statement etc.
- Goods falling under chapter heading 3401, 3402 (soaps and surface active agents), 7607 (aluminium foils) and wrist wearable devices falling under 851762 notified under the Third Schedule to the CET

Changes in the rate of excise duty

- Waters, including mineral waters and aerated waters, containing added sugar other sweetening matter or flavoured" falling under chapter 2202 10 increased from 18 per cent to 21 per cent with immediate effect.
- Oil Industries Development Cess under the Oil Industry (Development) Act, 1974 reduced from Rs.4500 PMT to 20 per cent ad valorem. This change will come into force with effect from the date of assent to the Finance Bill, 2016.
- Aviation turbine fuel (ATF) falling under tariff heading 2710 19 20 increased from 8 per cent to 14 per cent. However, ATF for supply to Scheduled Commuter Airlines from Regional Connectivity Scheme airports shall continue to attract 8 per cent.
- Clean energy cess on coal, lignite and peat, is increased from Rs.300 per tonne to Rs.400 per tonne.
- Ready Mix Concrete (RMC) falling under chapter heading 3824 50 10 manufactured at the site of construction for use in construction work at such site is being fully exempted from excise duty.
- Duty of 2 per cent per cent (without Cenvat Credit) or 12 per cent (with Cenvat Credit) is being imposed on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 of the CET with retail sale price (RSP) of Rs.1000 and above when they bear

or are sold under a brand name. Further, the tariff value for readymade garments and made up articles of textiles is also being increased from 30 per cent to 60 per cent.

- Duty of 6 per cent (with Cenvat Credit) in respect of unbranded apparel or readymade garments of only cotton falling under Chapters 61-63 with RSP in excess of Rs.1,000
- Exemption to unbranded apparel or readymade garments falling under Chapters 61-63 of the CET of RSP of Rs.1,000 or more exempted from excise duty.
- That the rate of abatement from RSP for all categories of footwear falling under Chapter 64 of the CET increased from 25 per cent to 30 per cent.
- Excise duty exemption is being withdrawn on charger/adapter, battery and wired headsets/speakers for use in manufacture of mobile handsets including cellular phones.
- Excise duty of 2 per cent without Cenvat credit or 12.5 per cent with Cenvat credit is being prescribed for charger/adapter, battery and wired headsets/speakers for manufacture of mobile handsets including cellular phone, subject to actual user condition.
- Excise duty is exempted on inputs and parts for use in manufacture of charger/adapter, battery and wired headsets/speakers of mobile handsets including cellular phone. Excise duty is also being exempted on inputs and sub-parts for use in manufacture of parts of charger/adapter, battery and wired headsets/speaker of mobile handsets including cellular phone.
- The validity period of concessional excise duty of 6 per cent granted to specified goods for the use in the manufacture of electrically operated vehicles and hybrid vehicles is being extended without time limit.

RSP Valuation goods

- Goods falling under heading 3401 and 3402 (i.e. Soaps, Organic surface active agents etc.,) notified under Section 4A of the CEA with an abatement of 30 per cent
- Aluminium foils of a thickness not exceeding 0.2mm falling under chapter heading 7607 notified under section 4A of the CEA with an abatement of 25 per cent.

Infrastructure Cess

- Infrastructure Cess is being levied on motor vehicles, of heading 8703, on
  - (i) Petrol/LPG/CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc – 1 per cent

(ii) Diesel driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc – 2.5 per cent

(iii) Other higher engine capacity motor vehicles and SUVs and bigger sedans – 4 per cent

- No credit of this Cess will be available, and credit of no other duty can be utilized for payment of Infrastructure Cess

CENVAT Credit Rules

Amendment in Definitions

- Definition of Capital goods is expanded to include wagons falling under tariff heading 86 06 92 of CETA, equipment and appliance used in an office located within a factory and goods used for pumping of water for captive use within the factory.
- Definition of Exempted Services is amended to provide that w.e.f 1st March, 2016, exempted services shall not include a service which is exported in terms of Rule 6A of the STR or service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.
- Definition of Input is amended to include goods used for pumping of water for captive use in the factory or premises of an output service provider and all capital goods up to the value of ten thousand rupees per piece under the scope of inputs. Accordingly, 100 per cent credit can be availed in the financial year when capital goods are procured provided that the value of such capital goods does not exceed Rs. 10,000 per piece.

Amendment regarding availment and utilization of Cenvat Credit

- Rule 3 (4) is amended to provide that the CENVAT credit availed under Rule 3(1) cannot be utilised for payment of Infrastructure Cess leviable under clause 159(1) of the Finance Bill, 2016. This is applicable w.e.f. 1st March 2016.
- Rule 4(5)(b) is amended to allow CENVAT credit on jigs, fixtures, moulds, dies and tools under Chapter 82 of CETA sent by the principal manufacturer directly to another manufacturer or job-worker without bringing the same to the premises of the principal manufacturer.
- Rule 4(7) is amended to allow cenvat credit of service tax paid on charges paid for right to use any natural resource as provided by way of assignment by the Govt. or any other person as follows—
    a. The credit of service tax that can be availed during a FY = The Service Tax paid on the charges for the assignment of the right to use / no. of years for which the rights have been assigned.

b. In case of transfer of such right for a consideration, the balance cenvat credit can be availed in the same financial year provided that such balance credit shall not exceed the service tax paid on such consideration

c. Also, credit of service tax paid on annual or monthly user charges paid for such assignment shall be allowed in the same FY in which they are paid.

Calculation of credit attributable to exempted goods or services

- Rule 6 (1) is substituted to provide that credit of inputs and input services used in the manufacture of exempted goods or services shall not be allowed. Further exempted goods to include non-excisable goods and exempted services to include those activity which are excluded from the definition of service.
- Rule 6(2) is substituted to provide that credit on inputs and input services shall not be allowed to a manufacturer who exclusively manufacturers exempted goods or service provider who exclusively provides exempted services.
- Rule 6(3) is substituted to provide the following two options to the manufacturer of goods or an output service provider providing both exempted and non-exempted goods/ services,
  - i) Pay an amount of 6 percent of value of exempted goods and 7 percent of the value of exempted services to a maximum total credit taken;
  - ii) Pay an amount as determined under sub-rule (3A)
- Rule 3A is substituted to simplify and rationalize the formula for calculation of credit attributable to exempted good or services. The total credit attributable to exempted goods or services is to be determined by dividing the total value of exempted goods and exempted services by the total turnover including exempted goods and exempted services and multiplying the same by the common credit availed during the month.
- The 100 per cent credit of inputs and input services used exclusively in the manufacture or provision of taxable goods or services is to be allowed and the formula for reversal is to be applied only in respect of common credit.

- The final credit is to be determined at the end of the financial year and the difference is required to be paid 30th June of the financial year and where such differential amount is not paid by the due date, the same has to be paid along with 15 per cent interest.
- Sub-rule (4) is substituted to provide that there cenvat credit on capital goods used exclusively in the manufacture of exempted goods or providing exempted services shall not be allowed for a period of two years from the date of commencement of the commercial production or provision of services. However, if the capital goods are received after the commencement of activities, the period of two years shall be computed from date of installation of such capital goods.
- These provisions will be applicable w.e.f 1st April, 2016

Input service distributor

- The concept of input service distributor is widened to allow the distribution of credit by an Input Service Distributor (ISD) to its manufacturing units or unit providing output service or an outsourced manufacturing units w.e.f 1st April, 2016, subject to the following conditions:
  - The credit distributed against a document referred to in rule 9, shall not exceed the amount of service tax paid thereon;
  - The credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;
  - The credit of service tax attributable as input service either to more than one unit but not to all the units; or to all the units shall be distributed only amongst such/ all units to which the input service is attributable on pro rata basis of the turnover of such units
  - The outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors;
  - The credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit.
  - Provisions of rule 6 shall not apply to the input service distributor.

Distribution of credit on inputs

- Rule 7B has been inserted to allow the distribution of credit on inputs by a warehouse of a manufacturing unit. A manufacturer having multiple manufacturing units/ factories are allowed to store their goods at common warehouse. The warehouse shall be allowed to take credit on inputs and distribute the input credit to the manufacturing unit under the cover of an invoice. In this regard, provisions applicable to first stage dealers or second stage dealers are applicable to a warehouse of the manufacturer.

Returns

- Rule 9A has been amended to provide for filing of returns by a manufacturer of final products or provider of output service for each financial year by the 30th of November of the succeeding year in the specified form**.**

Central Sales Tax

- Section 3 of the Central Sale Tax Act, 1956 has been amended to provide that in case gas sold or purchased through a common carrier pipeline whereby gas introduced in the pipeline in on State and is received out at the other State, such purchase of gas shall be deemed to be a movement of goods from one State to another thereby constituting inter state sale.

GLOSSARY OF TERMS

Abbreviation	Meaning
ARC	Asset Reconstruction Company
ATF	Aviation turbine fuel
BCD	Basic Customs Duty
BEPS	Base Erosion Profit Shifting
CAT	Common Admission Test
CETA	Central Excise Tariff Act, 1985
CG	Central Government
CNG	Compressed Natural Gas
CVD	Countervailing Duty
FB, 2016	Finance Bill, 2016
FY	Financial Year
GDP	Gross Domestic Product
Govt.	Government
HUF	Hindu Undivided Family
ISD	Input Service Distributor
LPG	Liquefied Natural Gas
MAT	Minimum Alternate Tax
NHAI	National Highways Authority of India
OECD	Organisation for Economic Co-operation and Development
p.a.	Per annum
PAN	Permanent Account Number
PCB	Printed Circuit Boards
PMT	Per Metric Tonne
PPP	Public Private Partnership
RBI	Reserve Bank of India

RMC	Ready Mix Concrete
RSP	Retail Sale Price
SAD	Special Additional Duty
SARFAESI Act, 2002	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
Sq.mt	Square meter
ST	Service Tax
SUV	Sport Utility Vehicle
STR	Service Tax Rules, 1994

HSA Advocates, a law firm based out of India, has a significant team of lawyers headed by 17 Partners. Our principal offices are in New Delhi, Mumbai and Kolkata with a presence in Bangalore. HSA Advocates is a culmination of the shared visions of its Partners and brings together the demonstrated strengths and leadership positions in diverse practice areas. HSA Advocates is a full-service law firm engaged in providing legal services in its chosen areas of practice. One amongst these areas is Indirect taxes. Our team of niche experts in Indirect taxes brings to bear their significant experience in advising various large clients on implications, optimization, planning and controversy

AWARDS AND RECOGNITIONS

- Tier 1 law firm in 'Projects & Energy' and leading law firm in Corporate M&A, Banking, Finance and Capital Markets, Private Equity, Dispute Resolution, Tax and TMT - Asia Pacific Legal 500
- Leading & highly recommended law firm in Corporate M&A; Private Equity; Projects, Infrastructure & Energy, TMT - Chambers Asia Pacific and Chambers Global
- Leading & highly recommended law firm in 'Banking & Finance, Energy & Natural Resources, IT, Telco & Media and Tax - Asialaw Profiles 2014
- In-House Community Firm of the Year, 2014 India – 'Energy & Natural Resources and Banking & Finance' – ASIAN MENA COUNSEL
- Environmental Law Firm of the Year – India – Lawyers World 2014 Country Awards
- M&A Law Firm for the Year India & Private Equity Law Firm of the Year India - Monthly Finance Global Awards 2014
- Corporate Law Firm of the Year India - DealMakers Law Awards 2014
- Indirect Tax Law Firm of the Year and Infrastructure Law Firm of the Year in India – Corporate Intl Global Awards 2014
- Winner of Indian Law Firm Awards 2013, IBLJ: Energy, Projects and Infrastructure
- Best Structured Finance Law Firm Of The Year – India - InterContinental Finance Global Awards 2013

FOR ANY QUERIES PLEASE REACH:
Mr. Nand Kishore
nand.kishore@hsalegal.com
Provided on request for personal use. Not for circulation or distribution.

CONTRIBUTIONS
ANKIT GULATI
ANSHUL VERMA
NAND KISHORE
RAMNATH PRABHU
RASHI SUREKA

CONTACT US

Delhi

81/1, Adchini
Sri Aurobindo Marg
New Delhi – 110017
Ph: (+91) (11) 6638 7000
Fax: (+91) (11) 6638 7099

Mumbai

Construction House, 5th Floor
Walchand Hirachand Marg
Ballard Estate
Mumbai – 400001
Ph: (+91) (22) 4340 0400
Fax: (+91) (22) 4340 0444

Kolkata

31/1, Lake Avenue
Kolkata – 700026
Ph: (+91) (33) 4073 1027