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BUDGET

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EDITORIAL

Dear Learned Members

Namaskar,

The Current Financial Year i.e. 2016-17 is about to end. We welcome a new Financial Year 2017-18.

The last financial year has been a landmark year in terms of Financial reforms.

The demonetization drive of our Hon'ble Prime Minister Shri Narendra Modi, the greatest issue of 2016-17 Financial Year, have had far reaching impact on Indian economy. The effects will be further visible in the days to come.

The second most important reform in the form of GST is to revolutionize the entire indirect tax scenario in the coming financial year.

On the Income Tax front too, with the passing of Finance Bill 2017, which is to be effective from 1st April, 2017, some of the key changes are :

- The tax rate for total income between Rs. 2.5 and Rs. 5 lacs has been reduced to 5 % from 10 % with the resultant effect on taxpayers having income above Rs. 1 crore can save upto Rs. 14,806 (including surcharge and cess) per year.
- Tax rebate is reduced to Rs. 2,500 from Rs. 5,000 per year for taxpayers with income up to Rs. 3.5 lacs (earlier Rs. 5 lacs).

  Due to the combined effect of change in tax rate and rebate, an individual with taxable income of Rs 3.5 lacs will now pay tax of Es. 2,575 instead of Rs. 5,150 earlier.
- Holding period for immovable property to be considered as "long term" has been reduced to 2 years from 3 years. This will ensure immovable property held beyond 2 years to be taxed at reduced rate of 20 % and eligible for various exemptions on reinvestment.
- Surcharge at 10 % of tax will be levied on rich taxpayers, having income between Rs. 50 lacs and Rs. 1 crore.
- The base year for indexation of cost (adjustment of inflation) has been shifted to April 1, 2001 from April 1, 1981, which means lower profits on sale.
- Long-term Capital Gains Tax will result in a lower payout owing to beneficial amendments.
- A simple one-page Tax Return form is to be introduced for individuals with taxable income up to Rs. 5 lacs (excluding business income).
- Delay in filing Tax Return for 2017-18 will attract penalty of Rs. 5,000 if filed by Dec 31, 2018 and Rs. 10,000 if filed later. Such fee will be restricted to Rs 1,000 for small taxpayers with income up to Rs. 5 lacs.
- Time period for revision of Tax Return cut to 1 year (from 2 years) from the end of the relevant FY or before completion of assessment, whichever is earlier.

Other important amendments are :

- An Income-tax Officer can enter premises of any person without giving any reason.
- Any one can donate to political parties anonymously using 'Electoral Bonds'.
- The cap on corporates donation to political parties removed.
- Aadhaar will become mandatory for filing Income-tax Return.

Friends! in this era of Circulars & Notifications, our profession has to face severe challenges in terms of meeting the demands of the society. Constant upgradation of knowledge is the key to success. Continuous automation in process requires us to be far more equipped, accustomed & aware of the procedures on day to day basis, so that the needs can be fulfilled apart from professional satisfaction of achievement.

The Monthly Journal of DTPA published with the intent of keeping abreast our already enlightened members through articles on latest issues by eminent contributors. Articles selected for publication in this monthly magazine by distinguished contributors provide matter-of-fact guidance for circumnavigating a strategic course through the convoluted landscape of tax rules and regulations. Top tax experts share their precise analysis of current tax issues, trends and legislative developments. The Journal also provides platform for debates on critical issues.

The current Issue is no exception. We are very much thankful to the writers who have spared their precious time through contributions for the magazine. We hope readers find this useful and we welcome suggestions for inclusion in future reviews.

CA Mahendra K. Agarwal

Chairman - Journal Committee

28th March, 2017

FROM THE DESK OF THE PRESIDENT

Dear Members,

Finally the Assembly Elections in India are over. With a massive mandate in Uttar Pradesh and Uttarakand, Bhartiya Janta Party formed the Government and simultaneously have a grip in Manipur and Goa as well. Congress is left with Punjab only. The much awaited election of 2017 and its result are over. Lots of promises are done in the election campaign and we can expect that the Government meet the expectations of the people of India. It should not go in vain like a quoted ……"Promises and pie-crust are made to be broken".

Budget 2017-18

This time Union Budget can be termed as ONE Budget for the entire India and both Finance Budget and Rail Budget have been merged together. The decade old tradition of presenting separate Budget has been done away with. It was first time when the Government of Shri Atal Behari Vajpayee who had changed the timing of presenting the Budget (earlier it was as per requirement of timing of United Kingdom) and now the Government of Shri Narendra Damodardas Modi has changed by merging both the budgets. After demonetization on 08.11.16 and mini budget presented by our Hon'ble Prime Minister on 31.12.16, the Union Budget is most awaited and announcements w.r.t. to policies, reforms, digitalization are all expected. The broad idea behind the presentation of the Budget by the Hon'ble Finance Minister Shri Arun Jaitley is to execute the budget through several welfare initiatives concerning farmers, the rural population, youth and the underprivileged. Several announcements made in Budget apart from rationalizing personal and corporate taxes, limiting the cash transactions to Rs.3 lacs (revised proposals to restrict the limit to Rs. 2 lacs in the current session of Parliament), cash donation to political parties has been capped to Rs.2000, donation to political parties through bonds, reducing the time for scrutiny assessment and much more. Our Association has also played its role in sending both Pre-Budget and Post-Budget Memorandum well in time.

Goods and Services Tax

GST now seems to be in reality from 01.07.2017, after CGST, IGST, UTGST and Compensation Bills passed by the Cabinet and waiting for approval of the Parliament in this budget session. Respective States are now required to pass the SGST Bills. GST Council has to approve Composition, Valuation, Input Tax Credit & Transition Rules in its Council Meeting to be held on 31st March 2017.

About the Association

Our Association is also trying to run with the speed of the Government by formulating new ideas and by organizing lecture meetings, group discussion meetings and other such programs which are having the interest to Members. Recently, we had organized the Information Technology Conference at the Park Hotel on 11th March, 2017 which was very well attended. Our Association has been awarded Highly Commendable Performance Award for 2016 by the Eastern India Regional Council of ICAI. Congratulations to all the Members. The residential seminar at Puri was a good success and considering that we have conceived an international seminar at Singapore. Till now, we are having very good response for the international seminar as well.

We wish to encourage the Members to send their valuable suggestions and feedback.

With warm regards,

CA Kamal Bagrodia
President

28th March, 2017

Certain provisions in Finance Bill 2017 needs urgent reconsideration

Advocate K. C. Singhal

Former Vice President, Income Tax Appellate Tribunal

Finance Bill 2017 contains huge proposals to amend the Income Tax Act 1961 having great impact. Some of the proposals are beneficial to the taxpayers while some of these are to curb the misuse of the existing provisions. Apart from this, certain proposals, in my opinion, need urgent reconsideration by the Government.

Firstly, would refer to the provisions relating to capital gain inserted by clause 6 & clause 22 of the Finance Bill 2017 which propose to amend the existing provisions of section 10(38) and section 45 respectively of the Income Tax act 1961 (hereafter referred to as "the Act").Though the intention of the legislature appears to reduce the genuine hardship of the taxpayer but the manner in which this provision is drafted, in my opinion, would not only defeat the legislative intent but also put onerous burden on the taxpayer.

Clause 6 of the Finance Bill 2017 proposes to insert a proviso to the existing provisions of section 10(38) which reads as under:-

> *"Provided also that nothing contained in this clause shall apply to any income arising from the transfer of a long-term capital asset, being an equity share in a company, if the transaction of acquisition, other than the acquisition notified by the Central Government in this behalf, of such equity share is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004."*

The **existing provisions** of section 10(38) of the Act provides exemption to the income by way of capital gain arising from the transfer of long term capital asset being an equity share in a company subject to the conditions that (i) sale of such share is effected on or after 1.10.2004 and (ii) such transaction is chargeable to security transaction tax (STT). As such, if the shares purchased off market without paying STT on or after 1.10.2004 and sold thereafter through stock exchange after paying STT, the profit arising from sale of shares (being long term) was exempt from income tax. Even such shares, if sold upto March 2017, will continue to be eligible for exemption from income tax.

However, as per the proposed amendment, such exemption would not be available if shares purchased off market on or after 1.10.2004 but on or before 31.3.2017 without paying STT and sold on or after 1.4.2017. In my opinion, it **would be illogical by any standard** to deny such exemption if such shares which were purchased off market during the period between 1.10.2004 and 31.3.2017 without paying STT even though profit on sale of such shares prior to 1.4.2017 is not chargeable to income tax as per the existing law.

The memorandum to the proposed Bill says that such exemption was being misused by **certain persons** for declaring their unaccounted income by entering into sham transactions. This statement itself shows that all the transactions entered into on or after 1.10.2004 but on or before 31.3.2017 are not sham. In other words, the taxpayers, who made genuine purchases made after 1.10.2004 but before 1.4.2017, will be subjected to severe hardships since the existing provisions promised exemption from tax. If the proposed amendment is allowed to become law, it would be opposed to the principle of promissory estoppel.

In fact, the income tax deptt. had been denying exemption in the past where investigation revealed that transactions of purchase and sale were sham. There is no logic to assume that all the transactions of purchase were sham. It would also be illogical to visualize the scenario that profits on sale of shares acquired before 1.10.2004 would continue to be exempt while profit on sale of shares acquired after such date without STT would be denied exemption particularly when such transactions were not illegal.

Therefore, in my view, there is no need to insert such proviso since deptt can always deny exemption in case of sham transactions. Alternatively, the proviso should be made applicable to future transactions of purchase and sale i.e. effective after 31.3.2017.

Another anomaly lies in insertion of sub section (5A) in section 45 by the proposed clause 22 of Finance Bill 2017. In order to understand the scope of proposed sub section (5A), it would be appropriate to reproduce the relevant portion of the said subsection as under :—

(5A) Notwithstanding anything contained in sub-section

*(1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, **the stamp duty value**, on the date of issue of the said certificate, **of his share, being land or building or both in the project**, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset:*

*Provided that the provisions of this sub-section shall not apply where the **assessee transfers his share in the project** on or before the date of issue of said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.*

The **moot question** is what is meant by the expression **"of his share"** mentioned in the main provisions of this sub section. *Whether it includes the built up portion of his share excluding the land OR the entire share in the project including portion of land and building? The literal construction, in my opinion, would mean the entire share in the project including portion of land and building. If so construed, it will lead to more hardship than under the existing law in as much as the portion of land retained with the owner cannot be said to have been transferred.*

Let me explain through example—

Example-1: A is the owner of land who agrees to transfer the possession of land to a developer to develop the same by leveling, providing roads, laying of water & sewerage pipelines, erecting electric poles and transmission lines as well as converting the land in to residential plots of various sizes. Under the terms of the registered agreement, the owner of the land will get 70% of the plots while the remaining 30% will go the developer. In such a scenario, as per the new provisions, stamp duty value of 70% of plots will be treated as full value of consideration received u/s 48 instead of 30% of plots actually transferred to the developer. *By any logic, no person can be taxed on the income arising from the deemed consideration relating to property retained by him since u/s 45, tax is to be levied only on the income arising property transferred and not from property retained with the transferor.*

Example-2 : A is the owner of land of 500 sq yard in Mumbai on which a small residential house is built in which the owner resides. Suppose, an agreement is executed between him and the developer under which developer is required to demolish the existing structure and construct 5 storied building thereon and out of the said building, 3 stories would be given to the land owner and remaining top 2 stories would go to the developer. Under such agreements, the corresponding share in land also gets transferred to the parties. Hence, in such cases, the land owner will retain 3 stories of building along with 3/5th share in the land while the developer will get ownership rights in 2 stories of building along with 2/5th share in the land . In such case, as per the proposed provisions, the land owner shall be taxed on the income arising from the deemed consideration relating to 3/5th share even though 2/5th share is actually transferred to the developer. **Such conclusion will be illogical and against the legislative intent** since no income can be said to arise from the portion of land which continue to remain with the land owner.

Under the existing law, it is cost of development incurred by the developer which can be considered as full consideration of the portion of land which gets transferred under the agreement from the land owner to the developer. *If the intention of the legislature is to reduce the hardship then the value of land remaining with the land owner must be excluded while determining the full value of the consideration u/s 48.*

Hope, that suitable amendment/ clarification is made in the proposed legislation before it is made the law of land.

The **next proposal** which needs reconsideration is insertion of new section234F which mandates payment of fees in case where return is filed after the prescribed date due u/s 139. It provides that fee of Rs. 5000/- to be paid where return is filed after due date but by 31st December of the assessment year and Rs. 10,000/- if return is filed after 31st December. However, where total income does not exceed five lakh rupees, such fee would not exceed one thousand rupees.

Under the **existing law**, no such fee is payable. In case return is filled after the end of assessment year, penalty not exceeding five thousand rupees is leviable in the absence of reasonable cause (section 271F).

In my opinion, such levy is unreasonable for the reasons—

(i) Under the general law, the fee is leviable for the services rendered while the tax is leviable compulsorily. On the other hand, penalty is leviable for contravention of law. Since no service is involved, the levy of fee is unlawful;

(ii) In case of delay in filing return, the assessee is

bound to pay interest for such delay and the govt. is compensated on that account and thus there is no loss to the exchequer;

(iii) Even where the assessee has paid excess tax by way of advance tax or TDS, he will have to pay fees despite there may be some reasonable cause for such delay;

(iv) There is no provision to take care of reasonable cause for delay on the part of assessee;

(v) The existing law is sufficient to care of such situation.

The next proposal which needs reconsideration is insertion of new section269ST which proposes to penalise taxpayers as well as non tax payers who will receive any amount of three lakh rupees or more otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account under the circumstances mentioned in clauses (a) to (c) of the section 269ST.

In my opinion, this provision requires amendment for the reasons—

(i) India is a country where most of the population is illiterate who are unaware of the legal provisions. Even literate persons are unaware of such persons. The apex court has also held that there is no presumption that everybody knows law. There is no safeguard for such innocent default;

(ii) That most of the areas in India are without banking facilities and therefore, it would create severe hardships to innocent people;

(iii) Even all digital transactions are not covered by the proposed section. A large number of population is using mode like PayTM which is an electronic clearing system **but not through** a bank account. Thus payment by such mode by innocent people will create severe hardships to such persons;

(iv) There may be cases of emergency where payment has to be made in cash like payment to hospitals who may not accept by cheque;

(v) There may be cases where payment, in emergency, is required to be made after banking hours;

It is pointed out that existing section 273B provides that no penalty is leviable if there is reasonable cause but no amendment is made in this section though similar amendment is proposed regarding default in proposed section 271J. Hence suitable amendment is required to be made in section 273B

In view of the above, it is hoped that Central Govt. will consider sympathetically and take the corrective measures.

Restrictions on cash transactions in Budget 2017-18

Advocate Narayan Jain

The Finance Minister has proposed a number of measures by proposing amendments to the Income Tax Act, 1961 to discourage cash transactions i.e. payments as well as receipts. Such amendments are analysed here.

1. AMENDMENT OF SECTION 40A(3) and 40A(3A) :

a) The existing provision of Section 40A(3) provides that any expenditure in respect of which **payment or aggregate of payments made to a person in a day**, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds Rs.20,000, shall not be allowed as a deduction for the purpose of Income tax. Further, sub-section (3A) of section 40A also provides for deeming a payment as profits and gains of business of profession if the expenditure is incurred in a particular year but the payment is made in any subsequent year of a sum exceeding Rs.20,000 otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

b) In order to disincentivise cash transactions, it has been proposed to amend the provision of section 40A of the Act to provide the following:

(i) **To reduce the existing threshold of cash payment to a person from Rs. 20,000 to Rs. 10,000 in a single day**; i.e any payment in cash above Rs.10,000 to a person in a day, shall not be allowed as deduction in computation of Income under the head "Profits and gains of business or profession";

(ii) **Deeming a payment as profits and gains of business of profession if the expenditure of a sum exceeding Rs. 10,000 is incurred in a particular year but the cash payment is made in any subsequent year** to a person in a single day; and

(iii) Further expand the specified mode of payment u/s 40A(3) as well as u/s 40A(3A) from an account payee cheque drawn on a bank or account payee bank draft to by an account payee cheque drawn on a bank or account payee bank draft **or use of electronic clearing system through a bank account**.

c) These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years. [Clause 15]

d) The monetary limit of Rs.20,000 was prescribed u/s 40A(3)by the Finance (No. 2) Act, 1996 w.e.f. asst. year 1997-98 (earlier it was Rs.10,000) and thereafter there was demand from business community to revise it upwards to Rs.50,000 considering the inflation. The Cost Inflation Index (CII) for F.Y. 1996-97 was 305 and for F.Y. 2016-17 it was 1125. If we consider CII then Rs.20,000 should have been increased to Rs.73,770. However with the object of discouraging the cash payments the FM has rather proposed to reduce the limit to Rs.10,000w.e.f. financial year beginning 1.4.2017 (relevant to asst. year 2018-19). The reduction of monetary limit does not appear to be practical move and needs review.

e) **Payment for transportation charges** : It may however be noted that the existing relaxed limt of Rs.35,000 for the purpose of section 40A(3) as well as section 40A(3A) will continue to apply in case of payments made for plying, hiring or leasing goods carriages.

f) **Circumstances prescribed under rule 6DD :** Further the benefit of first proviso u/s 40A(3A) will continue to be available. It provides that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession u/s 40A(3) and u/s 40A(3A) where a payment ot aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft **or use of electronic clearing system through a bank account exceeds Rs.10,000, in such cases and under such circumstances as may be prescribed under rule 6DD, having regard to the nature and extent of banking facilities**

available, consideration of business expediency and other relevant factors. However the ambit of rule 6DD is very narrow and needs review.

2. DISALLOWANCE OF DEPRECIAITON UNDER SECTION 32 ON CASH PAYMENT EXCEEDING RS.10000:

a) The limit for payment of revenue expenditure incurred in cash has been reduced to Rs.10,000 as per amendment proposed in section 40A(3)/(3A). However, there is no provision to disallow the capital expenditure incurred in cash. Section 35AD provides for investment linked deduction on the amount capital expenditure incurred, wholly or exclusively for the purposes of business, during the previous year for a specified business except capital expenditure incurred for acquisition of any land or goodwill or financial instrument.

In order to discourage cash transactions even for capital expenditure, it is proposed to amend the provisions of section 43 to provide that where an assessee incurs any expenditure for acquisition of any asset in respect which a payment **or aggregate of payments made to a person in a day**, otherwise than by an account payee cheque drawn on a bank or account payeebank draft or use of electronic clearing system through a bank account, **exceeds Rs.10,000, such expenditure shall be ignored for the purposes of determination of actual cost of such asset**.

The amendment will take effect from financial year beginning on 1st April, 2017 and will, accordingly, apply in relation to the assessment year2018-19 and subsequent years.

[Clause 16]

3. DISALLOWANCE OF CAPITAL EXPENDITURE UNDER SECTION 35AD ON CASH PAYMENT EXCEEDING RS.10000 :

a) Section 35AD allows deduction of the whole of the expenditure of capital nature incurred wholly and exclusively for the purpose of any specified business during the year. The specified businesses include : Laying & Operating a cross country natural gas pipeline network for distribution including storage facility; setting up and operating a warehousing facility semi conductor wafer fabrication manufacturing unit; developing or operating or maintaining any infrastructure facility as well as other businesses specified in section 35AD(5).

b) It has been proposed to amend section 35AD to provide that any expenditure in respect of which payment oraggregate of payments made to a person in a day for specified business, otherwise than by an account payee cheque drawn on a bank or an accountpayee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000, no deduction shallbe allowed in respect of such expenditure.

c) These amendments will take effect from financial year beginning on 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years. [Clause 13]

d) However capital assets being costlier, a limit of cash payment of upto Rs.10,000 seems quite on lower side and the FM will do well in retaining the limit to at least present amount of Rs.20,000.

4. AMENDMENT OF SECTION 44AD FOR PROMOTING PAYMENTS THROUGH BANK AND DIGITAL PAYMENTS IN CASE OF SMALL UNORGANISED BUSINESSES:

a) The existing provisions of section 44AD, inter-alia, provides for a presumptive income scheme in case of eligible assesses carrying out eligible businesses. Under this scheme, in case of an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding **Rs.2 Crore** in a previous year, a sum equal to **8 per cent of the total turnover** or **gross receipts**, or, as the case may be, a sum higher than the aforesaid sum declared by the assessee in his return of income, is deemed to be the profits and gains of such business chargeable to tax under the head “profits and gains of business or profession”.

b) In order to promote digital transactions and to encourage small unorganized business to accept digital payments, it has been proposed to amend section 44AD of the Act to reduce the existing rate of deemed total income of 8 per cent to 6 per cent in respect of the amount of such total turnover or **gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account** during the previous year or before the due date specified in section 139(1) in respect of that previous year.

c) However, the existing rate of deemed profit of 8% referred to in section 44AD, shall continue to apply in respect of total turnover or gross receipts received in any other mode i.e. other than by an account payee Cheque / Bank DD/ **use of electronic clearing system through a bank account**.

d) This amendment is **retrospective** and will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years. [Clause 21]

5. RESTRICTION ON CASH RECEIPTS OF RS. 3 LAKHS OR MORE ON A SINGLE DAY FROM A SINGLE PERSON OR TRANSACTION RELATING TO ONE EVENT THOUGH INSERTION OF NEW SECTION 269ST :

a) In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a resource crunch for its various welfare programmes. Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash.

b) In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, it is proposed to insert section 269ST in the Act to provide that no person shall receive an amount of Rs. 3 lakh or more,—

(i) in aggregate from a person in a day;

(ii) in respect of a single transaction; or

(iii) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

c) It is further proposed to provide that the said restriction shall not apply to Government, any banking company, post office savings bank or co-operative bank. Further, it is proposed that such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the proposed restriction on cash transactions shall not apply.

d) Transactions of the nature referred to in section 269SS are proposed to be excluded from the scope of the said section.

e) A question has been raised whether the new provisions of section 269ST will also apply if a person withdraws cash from Bank. In my view it will apply. Further **if a person withdraws from various banks (from each bank less than Rs. 3 Lakhs on the same day), then whether it is permitted.** In my view if the Banks are different, there should be no problem.

6. PENALTY OF 100 PER CENT UNDER NEWLY PROPOSED SECTION 271DA IN CASE OF RECEIPT OF RS.3 LAKHS OR MORE IN VIOLATION OF SECTION 269ST :

a) It has also been proposed to insert new section 271DA to provide for levy of penalty on a person who receives a sum of Rs.3 Lakhs or more in contravention of the provisions of the proposed section 269ST. The penalty is proposed to be a sum equal to the amount of such receipt/ receipts.

b) The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention.

c) It is also proposed that any such penalty shall be levied by the Joint Commissioner.

d) It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of one per cent of sale consideration on cash sale of jewellery exceeding Rs.5 Lakhs.

e) These amendments will take effect from 1st April, 2017.

[Clauses 71, 83 & 84]

7. TRANSPARENCY IN ELECTORAL FUNDING TO POLITICAL PARTIES:

a) The existing provisions of section 13A inter-alia provides that political parties that are registered with the Election Commission of India, are exempt from paying income-tax subject to fulfil of certain conditions. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of section 29C of the Representation of the People Act,1951 furnishing the details of contributions received by a political party in excess of Rs.20,000 from any person.

b) However, under existing provisions of the Act, there is no restriction of receipt of any amount of donation in cash by a political party.

c) A political party is also required to file its return of income under section 139(4B) of the Act, if its income exceeds the maximum amount not chargeable to tax (without considering the exemption under section 13A). However, filing of the return is not a condition precedent for availing exemption u/s 13A.

d) **Additional conditions for availing the benefit of section 13A:** In order to discourage the cash transactions and to bring transparency in the source of funding to political parties , it has been proposed to amend the provisions of section 13A to provide for additional conditions for availing the benefit of the said section, which are as under:

(i) **No donations of Rs.2000/- or more** is received otherwise than by an account

payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds,

(ii) **Political party furnishes a return of income** for the previous year in accordance with the provisions of section 139(4B) on or before the due date u/s 139.

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

f) This amendment will take effect from financial year begining on 1st April, 2017 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years. [Clause 11]

g) The Political parties will do well by accepting the new stipulation and if necessary there should be mutual consultation among political parties and an acceptable view may be worked out.

8. LIMIT OF CASH DONAITONS REDUCED FROM RS. 10,000 TO RS.2,000 FOR BENEFIT U/S 80G :

a) Under the existing provisions of section 80G, deduction is not allowed in respect of donation made of any sum exceeding Rs.10,000, if the same is paid by cash.

b) In order to provide cash less economy and transparency, it has been proposed to amend section 80G so as to provide that no deduction shall be allowed u/s 80G in respect of donation of any sum exceeding Rs. 2,000 unless such sum is paid by any mode other than cash.

c) This amendment will take effect from financial year beginning 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

[Clause 35]

9. PROMOTING DIGITAL ECONOMY :

All the above measures are basically intended to discourage cash payments in the Indian economy. So far payment by Cheques is concerned there is no extra cost and in case of payment by RTGS or NEFT the cost is modest. In case of Bank draft now a days the cost charged by some banks is as much as Rs. 400 per Lakh, which is on higher side. It is understood that payment by Paytm or other digital means also involves cost of 2 per cent to 2.5 per cent to the seller or recipient of the payment. That means it may be as much as Rs. 2500 per one Lakh. The Government needs to appreciate the cost factor if the digital payments are to be promoted. Further the arrangements should be made by all Banks to ensure that debit card and credit cards are made available across the counter on production of minimum documents to prove one's identity. Digital payments in other developed countries are a matter of routine. In India also it needs to be encouraged but it is not practical over night without developing proper infrastructure and without substantially lowering the cost involved.

Proposed Amendments in search, assessment and re-assessment provisions by the Finance Bill, 2017

Advocate N. M. Ranka

1. Introduction :

Union Finance Minister Shri Arun Jaitley, placed Union Budge for the year 2017-18 before the Parliament on 1st February, 2017, instead of 28th February, 2017. No separate budget for Railways was placed by the Railways Minister and the Railways Budget stands merged with the General Budget, which have been claimed as a historic step. Classification of expenditure between plan and non-plan have been done away with The Finance Bill, 2017 to give effect to the financial proposals of the Central Government for the Financial Year 2017-2018 was introduced in Lok Sabha on 1st February, 2017. Though many amendments, insertions, and substitutions have been made in the existing act, this article is restricted to the provisions relating to search, assessment and re-assessment only.

2. Search Provisions :

Existing Section 132(1) of this Act requires the prescribed authority to record "reasons to believe" before issuing authorization to the authorized officer to search and reasons in the situation detailed in clauses (a) or (b) or (c) of the said section. Recording of reasons is not an idle formality. There must be live link and rational and reasonable connection, between the information and the satisfaction. On challenge it is justiciable and in case there is no information on which a reasonable person well instructed in law could form the belief, action is liable to be quashed. Assesses use to apply for copy of authorization, copy of reasons recorded with material and information in possession for recording such reasons. The Revenue use to deny the copy or the inspection on the plea it is an administrative act and informer/ information is in secrecy and cannot be disclosed.

2.1 In C. IT. V Smt. Chitra Devi (2009) 313 I.T.R. 174 (Raj.), it was held that on challenge of invalidity of the search before the tax authorities or the Appellate Tribunal the Revenue is bound to produce the search authorization and relevant record for perusal of the Income Tax Appellate Tribunal and on failure to do so, search could be held as bad and assessment proceedings quashed. SLP was dismissed by the Supreme Court. In C.I.T. V. Smt. Umesh Goel (2016) 387 I.T.R. 575 (Raj.) it was found that on challenge to validity of the search and reasons recorded, the C. IT (A) called for Form No. 45, warrant. It was perused and found that there is no specific warrant of authorization against the assessee and hence search being invalid proceedings for assessment are bad.

2.2 In order to avoid such challenge, it is proposed to insert an Explanation after the fourth proviso to the said sub-section (1) so as to provide that the "reason to believe" recorded by the prescribed authority shall not be disclosed to any person or any authority or the Appellate Tribunal. This amendment will take effect retrospectively from the date of commencement of the Act i.e. 1st April, 1962. Now the assessee would not be able to call for copy of recorded reasons, nor to inspect or to require the assessing authority or appellate authority or the Income Tax Appellate Tribunal to call for the records, peruse the "reasons recorded", to entertain objection as to invalidity of the search so conducted and seizure effected. Challenge to the validity of the search and its consequence would not be entertained by the tax authorities and Appellate Tribunal.

2.3 In my view the challenge to the validity of the search, non-existence of "reason to believe", non-existence of material information to entertain the behalf, absence of conditions precedent which are sinequanon for issuance of authorization for search and seizure can continue to be challenged under articles 226 and 227 of our Constitution, by way of a suitable writ. On challenge and on prima-facie satisfaction, the writ court would be competent to direct the Revenue to produce the record and after production to peruse, to furnish copy, to provide copy to the petitioner and to consider issue of lack of jurisdiction and invalidity of the action. The forbidden authorities are appellate, the Income Tax appellate tribunal and the person searched or any other person, other than the High Court or the Supreme Court in challenge under article 32 of the Constitution. Right to challenge as on an action u/s 148 of the Act by way of a writ remains open. All judicial precedents for the expression

"reason to believe" for section 147 would be to the aid of the petitioner.

2.3.1 In New Kashmir and Oriental Transport Co. (P.) Ltd. V. C. IT. (1973) 92 I.T.R. 334 (Allahabad), as early as on 07.09.1972, it was held that when a challenge is thrown to the validity of search in a writ petition, the petitioner is entitled to inspect the record of the proceedings and to obtain copies of the orders passed in those proceedings, as Rule 12 framed under section 132 (14) requires, the reasons shall be recorded. In M.D. Overseas Ltd. V. DGIT (2011) 333 I.T.R. 407 (Allahabad), it observed. "The court, in an appropriate case, can order the Department to indicate the contents or nature of information/ material and reasons to believe authorizing the search (without disclosing the source of information) to the aggrieved person. The question of relevancy of information/ material and reasons to believe is to be judged after hearing the aggrieved person. The question of their relevancy is not to be decided without assistance of the aggrieved person. This is subject to any valid claim of privilege under sections 123 and 124 of the Evidence Act, 1872." It directed for disclosure of the information.

2.3.2 In Visa Comtrade Ltd. V. V.O.I. (2011) 338 I.T.R. 343 (Orissa) it was held "Before taking action under section 132 the competent authority must assure and reassure about the truthfulness and correctness of the information. A search under section 132 is a serious invasion in to the privacy of the citizen. Therefore, section 132(1) has to be strictly construed and the information of the person or reason to believe by the authorizing officer must be apparent from the note recorded by him" It also observed "Formation of opinion on the basis of reason to believe that a particular property/asset has not been disclosed or would not be disclosed so that the action under section 132 would be taken, is not an empty formality."

2.3.3 Recently on 13.05.2015 in DGIT V. Spacewood Furnishers Pvt. Ltd. and others (2015) 374 I.T.R. 595 (S.C.) observed "The necessity of recording of reasons for issue of a warrant of authorization for search under section 132 of the Income Tax Act, 1961, so as to ensure accountability and responsibility in the decision-making process acts as a cushion in the event of a legal challenge being made to the satisfaction reached. Reasons enable a proper judicial assessment of the decision taken by the Revenue. However, this, by itself, would not confer in the assessee a right of inspection of the documents or to communication of the reasons for the belief at the stage of issuing of the authorization. Any such view would be counter-productive of the entire exercise contemplated by section 132 of the Act. It is only at the stage of commencement of the assessment proceedings after completion of the search and seizure, if any, that the requisite material may have to be disclosed to the assessee. While reasons in support of the "reasonable belief" contemplated by section 132 must be recorded, there is no provision requiring the reasons recorded prior to authorizing the search to be disclosed or communicated to the person against whom the warrant of authorization is issued."

2.4 The proposed Explanation is to do away with the claim of an assessee to challenge validity of the search on non-recording of valid reasons. However, as explained earlier the inherent right to challenge the validity and jurisdiction for issuance of the authorization to search exists, could not be done away with and could not be closed. It would be open to an assessee to challenge the search and subsequent action by an appropriate writ, before the High Court. The Hon'ble Court would be entitled to call for the records, peruse and provide copy or permit inspection, as it may deem fit and proper.

2.5 Similar Explanation has been proposed to be inserted w.e.f. 01.10.1975, in the said sub-section (1A) of Section 132 so as to declare that "reason to suspect" shall not be disclosed to any person or an authority or the Appellate Tribunal. However, as analyzed herein before the right of the Courts and High Courts remain as hitherto fore.

2.6 It has also been proposed to insert sections (9B), (9C), (9D) in existing section 132, to attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director. This power is conferred for the purpose of protecting the interest of revenue. Reasons shall have to be recorded and provisional attachment order shall have to be issued in writing with the prior approval of the specified authority. Such order would be operative for six months from the date of the order. Power has also been conferred on the authorized officer to refer valuation of a property to the valuation officer in the manner provided u/s 142A of the Act. The valuation officer to provide the valuation report in six months. The proposed provisions are similar to existing Section 281-B of the act.

2.7 It has been further proposed to amend existing Explanation to Section 132 so as to apply the provisions of existing section 153B, time limit for completion of assessment, with respect to "execution of an authorization for search" for the

purposes of the existing Section (9A) and proposed new sections (9B - provisional attachment) and section (9D - valuation). These amendments will take effect from 01.04.2017 i.e. are prospective.

2.8 On the same lines as under Section 132 (1)and 132(1A) it has been proposed to insert an Explanation to the said sub-section, so as to declare that the reason to believe for making the requisition shall not be disclosed to any person or any authority or the Appellate Tribunal. But it can be called for by the Court or the High court as discussed hereinabove. This amendment has been proposed to be operative from 01.10.1975.

3. Return, assessment and re-assessment.

Existing sub section (4C) of Section 139 mandates filing of returns by certain entities which are exempt u/s 10. It is proposed to provide that - (1) Fund established for the welfare of employees u/s 10 (23AAA), Investor Protection Fund u/s 10 (23 EC or Clause 23 (ED); Core Settlement Guarantee Fund u/s 10(23 EE) and Board or Authority u/s 10(29A) shall also be mandatorily required to furnish the return of income.

3.1 Section 139 (5) regarding filing of revised return is proposed to be amended whereby time for furnishing revised return shall be upto the end of the relevant assessment year or before completion of assessment whichever is earlier. Existing period of one year from the end of the relevant assessment year is reduced. Both these amendments would be from 01.04.2018 and shall apply to the assessment year 2018-19 and subsequent years

3.2 Section 234F has been proposed to be inserted whereby late fee of Rupees 5,000/- or 10,000/- as the case may be shall be payable if return for the assessment year 2018-19 and onwards is filed not on the due date but before 31st December or after 31st December, as the case may be. However whose total income does not exceed Rs. 5 lacs quantum of fee would be Rs. 1000/-. It shall be payable along with tax and interest on self-assessment u/s 140A of the Act. Such fee payable shall also be considered while processing of return u/s 143(1) of the Act.

3.3 Section 143 (1D) (as substituted by section 68 of the Finance Act, 2016) has been proposed to be substituted whereby it shall not be necessary to do processing u/s 143(1), where a notice for scrutiny has been issued u/s 143(2). It shall be for the assessment year 2017-18 and onwards.

3.4 Existing section 153 of the Act provides for time limit for completion of assessment, re-assessment and re-computation. Time limit proposed for regular assessment u/s 143 or 144 is being reduced to 18 months from existing 21 months for the asst. year 2018-19 and 12 months for the assessment year 2019-20 and onwards.

3.5 Similarly for an assessment, re-assessment or re-computation u/s 147, if notice u/s 148 is served on or after 01.04.2019, time limit for completion of assessment shall be 12 months from the end of the financial year in which notice was served.

3.6 Time limit for making fresh assessment pursuance to an order of the Tribunal u/s 254 or revision u/s 263 or 264 shall be 12 months from the end of the financial year in which order is received or passed.

3.7 From existing third proviso to explanation 1 of section 153 the reference to section 153B has been proposed to be omitted. All these amendments will take effect from 01.04.2017.

3.8 It is proposed to amend existing sub-section (5) of section 153. Where an order u/s 250 or 254 or 260 or 262 or 263 or 264 requires verification of any document or other person or granting on opportunity of being heard, the time limit relating to fresh assessment shall be as that in amended section 153(3).

3.9 Section 153(9) has been proposed to be amended to provide that where a notice under Section 142(1) or 143(2) or 148 has been issued prior to 01.06.2016 and assessment or re-assessment has not been completed by the due date due to exclusion of time referred to in Explanation I, such act shall be completed in accordance with the provisions existing before the substitution of the said section by the Finance Act, 2016 meaning thereby under the old section. These amendments will take effect from 01.06.2016.

4. Special Agreement in search or requisition cases.

During the last five years there is thrust on searches and its expeditious assessments, to enable to collect additional revenue and to curb unaccounted for assets, transactions, black money and corruption, which is flagrantly prevalent in all the fields. Section 197 (c) of the Finance Act, 2016, provided that where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of the Income Declaration Scheme, 2016, and no declaration in respect of such evaded income is made, then such income shall be deemed of the year in which a notice under section 142 (1) or 143 (2) or 148 or 153 A or 153C of the Act is issued by the Assessing officer and it shall be taxed in such year. It was noticed that such section is unconstitutional and action would be void. However, the Central Board of direct Taxes clarified that

the Finance Act, 2016, being later on point of time would prevail over the provisions of the income Tax Act. It is not correct interpretation of law. Good senses have prevailed and the said section197 (c) stand omitted. We are happy it is better to correct the mistake rather then to harass the tax payers with long drawn litigation. We have been told that some enlightened super active assessing authorities issued notices under the said provision. Such notices shall have to be withdrawn as a face saving. This amendment is w.e.f. 1st June, 2016

4.1 Section 153 A provides in case of search under section 132 and requisition under section 132A for issuance of notice to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Now it is proposed to extend the said six years upto ten assessment years relevant to the previous year in which search is conducted or requisition is made in the following circumstances:-

(i) If the assessing officer has in his possession books of account or other document or evidence which reveal, the escaped income is likely to be fifty lacs or more in ten years;

(ii) Such escaped income is represented in the form of asset including immovable property being land or building or both, shares and securities, deposits in bank account loans and advances and it relates to the said ten years ;

(iii) Search is initiated or requisition is made on or after 01.04.2017 Consequent amendments have been proposed to the provisos of section 153 A. It is also proposed to insert Explanation to define the expression “relevant assessment year”, to mean an assessment year preceding the previous year of search or requisition which falls beyond six assessment years, but not later than ten assessment years, from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. Explanation 2 explains the word “asset” as noted earlier. Applicability of this provision from 01.04.2017 shows the intention of the Government to give one more final chance to avail of “Pradhan Mantri Garib Kalyan Yojana, 2016”, which is open upto 31.03.2017

4.2 Section 153B is proposed to amend time limit for completion of six assessments under section 153 A within 21 months from the end of the financial year in which the last of the authorization for search or requisition was executed Hence time limit for searches conducted upto 31.02.2017 shall remain as it exists earlier. However for the search and seizure cases conducted in or after 01.04.2017 the time limit for making an assessment shall be reduced from 21 months to 18 months. It is also proposed to reduce the time limit for completion of assessment in case of such searches form 01.04.2019 and onwards to 12 months

4.3 In case of third party assessment under section 153C the time limit for completion of assessment shall be same as that of the person searched or 12 months from the end of the financial year in which books of account or documents or assets sized or requisition are handed over to the said assessing officer, whichever is later.

4.4 It is also proposal to insert a proviso to the Explanation to the said section, that where a proceeding before the Settlement Commission abates under section 245 HA, the period of limitation shall not be less than one year after exclusion of the period taken in the settlement proceedings under section 245 HA (4) of the Act.

4.5 As a saving measure, in respect of a notice under section 153 A or 153C, issued prior to 01.06.2016, and assessment is pending, such assessment shall be completed in accordance with the provision of this section as it stood before its substitution from 01.06.2016. Second proviso to section 153 C has been proposed to be amended, so as to provide a reference to the relevant assessment year as referred in the Explanation to section 153 A (1) i.e. instead of six years – not to exceed ten years. All these amendments shall be operative from 01.06.2017.

5. Conclusion

The extension of period to 10 years in search cases as against six years in other cases cannot be said to be discriminatory or unconstitutional. Separate classification of person searched and found possessed with specified assets and without the specified assets, can be claimed to be reasonable classification and two identifiable categories. Reduction in period for completion of assessments and re-assessments is welcome. If would expedite revenue collection and also expeditious end of lis with the Revenue. However, it is desirable to change mind set of assessing and appellate authorities so as to make assessment in accordance with law and not hanky panky or on surmises or suspicions or conjectures. Let the tax payers and the tax collectors have introspection and both to do their duty as a civilized citizen of this Great country of India.

Analysis of provisions of Finance Bill 2017 related to Joint Development Agreement

CA P. R. Kothari

Introduction :

Subject to final enactment, salient features of proposals of Finance Bill, 2017 (Finance Bill) related to Income tax Act, 1961(Act) affecting taxation of capital gain in cases of certain Joint Development Agreements are discussed in this write up. All the sections referred in this write up are that of Act. The land, building or both has been referred as 'immovable property' and owners who hands over possession of his immovable property to developers for development of that property has been referred as 'owner'.

Background :

As per existing provisions, as interpreted by many Courts, in the case of Joint Development Agreements, capital gain tax is charged in the hands of the owner of immovable property in the year in which possession of owner's immovable property is handed over to developer for development of the real estate project. It results in genuine hardship to owners who had to pay tax without receiving the major portion of consideration which is usually received after a gap of about 2-3 years or more in the form of share in the real estate project. To mitigate this genuine hardship, a new regime of taxation of capital gains in the hands of owners of immovable properties under such Joint Development Agreement is proposed.

Salient features of proposed provisions :

Clause 22 of Finance Bill, proposes new provisions in respect of chargeability of capital gain in the hands of individual or hindu undivided family being an owner of immovable property who enter into certain Joint Development Agreement with a developer. This clause proposes to insert a new sub section (5A) to section 45 to provide as under :

a) This provision will override general provisions of section 45(1) regarding taxation of capital gain in the hands of individual/h.u.f. owner of immovable property for such property transferred to developer under Joint Development Agreement for a consideration in the form of share in immovable property in the property developed under the Joint Development Agreement whether some cash consideration is also received by the owner or not.

b) It will apply to capital gain arising to individual or hindu undivided family on transfer of immovable property held as capital asset in terms of section 2(14) of Act and not to properties held as non capital assets.

c) The transfer is to be made by registered agreement by which owner of immovable property agrees to allow developer to develop a real estate project on such immovable property of owner.

d) The consideration to be paid to owner of immovable property in aforesaid agreement for allowing developer to develop real estate project on owner's immovable property is required to be in the form of share in said real estate project and such consideration may be with or without payment of part consideration in cash over and above that share in said real estate project.

e) in case of transfer as referred above, the capital gain in the hands of individual or h.u.f. owner of immovable property, shall be chargeable as income in the year in which certificate of completion for whole or part of the project is issued by the competent authority empowered to approve building plan by or under any law.

f) In the aforesaid cases, for the purposes of computation of capital gain u/s 48 in the hands of owner in respect of immovable property transferred to developer, the value of owner's share in real estate project in the form of immovable property, adopted or assessed by stamp duty authority for stamp duty purposes on the date of issue of completion certificate referred above plus any consideration received by owner in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of transfer of immovable property by owner to developer. It is to be noted that for capital gains tax, market value for stamp duty purposes, of share received from developer in the form of immovable property plus consideration received in cash is treated as full value of consideration and as per consequential amendment to section 49 vide clause 24 of Finance Bill, same amount is deemed as cost of acquisition of said owner's share in the form of immovable property in real estate project when the same is transferred subsequently by the owner.

g) The aforesaid provisions of deferment of tax shall not apply if assessee being owner of immovable

property transfers his share in real estate project on or before the date of issue of aforesaid certificate of completion by concerned authority and subject capital gain shall be chargeable as income of the year which such share in real estate project is transferred. In that case, capital gain shall be computed as per usual provisions of section 48 and provisions of computation of capital gain as sought to be made applicable by sub section (5A) to section 45 as explained above shall be ignored.

h) Sub section (5A) to section 45 is proposed to be applicable w.e.f. asst. yr. 2018-19.

Points to consider :

i) The proposed provisions are not applicable to :

   a) such owner of immovable property who is assessed in the status other than individual or h.u.f. who transfers its such capital asset to developer under Joint Development Agreement.

   b) transfer of immovable property held as non-capital asset by the owner of said immovable property.

   (c) transfer of immovable property by owner to developer where no part of consideration is to be received from developer in the form of immovable property in the subject real estate project under Joint Development Agreement. (There is no specification of minimum part of consideration to be received from developer in the form of immovable property in the subject real estate project and therefore, even if a part is received as share in project and major part is received by non cash monetary consideration the capital gain tax is deferred upto receipt of completion certificate by the competent authority even for such monetary portion of consideration also).

ii) The proposed provision defers the capital gain tax till receipt of completion certificate even if assessee owner gets his share in real estate project before that and does not transfer his such share or retains the same with him for his own use.

iii) Under the proposed provisions, the deferred capital gain tax is charged on market value, for stamp duty purposes, of the entire share in real estate project received from developer in the form of immovable property plus consideration received in cash. It is notable that any consideration received other than in cash, apart from share in real estate project in the form of immovable property, will not be added as income for capital gain purposes. Though memorandum explaining these provisions of Finance Bill uses the words 'monetary consideration' in place of 'cash' used in proposed sub-section but because of express and unambiguous provisions of sub-section itself, only cash consideration and not other monetary consideration should be added to value of share in real estate project in the form of immovable property while computing full value of consideration for purposes of section 48.

iv) The proposed provision contemplates the payment of capital gains tax in the hands of owner of immovable property in the year of issuance of completion certificate by competent authority even for the part of the project irrespective of fact that completed part is out of developer's share and owner's share is still incomplete.

v) It is also not clear that where assessee owner transfers even part of his share in the real estate project before the date of issue of completion certificate by competent authority, whether the proviso to proposed sub section (5A) of section 45, barring the deferment of capital gain tax on such owners, shall be applicable or not?

   Here, in my opinion, receiving advance against transfer of any unit in the project without handing over possession to the concerned unit buyer will not amount to transfer of any share in the project and rigour of proviso to sub section (5A) to section 45 shall not be applicable.

vi) As the proposed provisions of sub section (5A) to section 45 are sought to be made applicable w.e.f. asst. yr. 2018-19, it seems that capital gain in the hands of owner under subject Joint Development Agreement between owner of immovable property and developer, whether entered into before 01.04.2017 but where possession of immovable property is handed over on or after 01.04.2017 to the developer for development of project, shall be governed by proposed sub section (5A) of section 45.

vii) Proposed provisions of t.d.s. vide clause 64 of Finance Bill inserting new section 194-1C mandates for deduction of 10% t.d.s. on any monetary consideration paid by developer to owner of immovable property under the Joint Development Agreement referred in proposed new sub-section (5A) to section 45 without any the sehold limit. This may create some practical difficulties for owners to get credit against such t.d.s. as Form 26AS will reflect t.d.s. in one year whereas credit shall be allowable in later year when completion certificate in respect of whole or part project is issued by competent authority. Although return forms have been designed to take care of this type of situation but system is required to be made more effective to address such practical difficulties.

viii) The proposed provisions should have clearly spelled out the date which will be considered as date of transfer of owner's immovable property to developer so as to leave no ambiguity about long term or short term nature of capital gain as well as extent of cost indexing benefit, if any, in the hands of owner.

Affordable Housing

CA Pradip N. Kapasi

The Income Tax Act contains a couple of provisions for conferring the tax incentives with the intention to promote the construction and development of the affordable housing projects in India. These provisions are contained in sections 35AD and 80IBA of the Act. While sec. 35AD specifically restricts it's scope to the development of the housing under the prescribed schemes for affordable housing of the Government and notified by the Board, the incentive u/s. 80IBA does not suffer from any such limitation.

The deduction @ 100% of profits and gains, derived from the business of developing and building housing projects, is granted w.e.f. A.Y. 2017-18 under the newly introduced provisions of sec. 80IBA by the Finance Act, 2017. The incentive, introduced the previous year by the Finance Act, 2016, has the objective of promoting the affordable housing in India and the benefit of it is made available on compliance of various terms and conditions listed in sec. 80IBA, most of which are on the lines of sub-sec (10) of 80IB of the Act.

The Finance Bill of 2017 seeks to make three important amendments in sec. 80IBA so as to promote the development of affordable housing sector by relaxing the few conditions presently prescribed.

Built-up area to Carpet area; One of the conditions contained in clause (f) of sub-sec (2), presently require that the built up area of the residential unit comprised in the housing project does not exceed 30 sq. meters for projects located within the municipal limits of the four metropolitan cities namely, Chennai, Delhi, Kolkata, Mumbai or within the area of 25 kilometers from the municipal limits of these cities. The limit of the size of the residential unit, for areas other than the metropolitan cities and the above referred peripheral areas, is 60 sq. meters of built up area.

'The built up area' is defined by clause (a) sub-sec (6) and means the inner measurements of the residential unit at the floor level as increased by the thickness of the walls. It also includes the projections and the balconies but does not include the shared common areas and any open terrace. In addition clause (c) provides that the built up area of the shops and other commercial establishments shall not exceed three per cent of the aggregate built up area.

An important amendment is sought to be made in sec. 80IBA to provide that the requirement of the built up area for the purposes of clause (c) and clause (f) shall be substituted by the 'carpet area'. The term 'carpet area' is defined vide insertion of clause (a) in sub-sec (6). The 'carpet area' shall carry the same meaning as assigned to it in clause (k) of sec 2 of the Real Estate (Regulation and Development) Act, 2016 which is reproduced here under:

"*carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.*

Explanation. — For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee"

The important differences that arise between the two definitions are;

- The area covered by the external walls is specifically not included in the carpet area and therefore removes any doubts about its inclusion.
- The area of exclusive balcony or verandah or open terrace are excluded from the carpet area. Under an explanation, it is provided that the exclusive balcony or verandah and open terrace shall mean the area i.e. appurtenant to the net usable floor area of an apartment which is meant for the exclusive use of the allottee.

Accordingly, a significant relaxation is sought to be provided under the amendment where under the balcony, verandah and the open terrace would not be includible in the maximum permissible area of 30 sq. meters or 60 sq. meters, as the case may be, for the purposes of sec. 80IBA of the Act.

The consequence of the amendment is that the area available for the shops and commercial establishments shall now be measured with reference to the carpet

area and the aggregate carpet area.

This amendment is sought to be made effective from 1st April, 2018 and is made applicable to A.Y. 2018-19 onwards.

Increase in size of unit for peripheral areas : The second important amendment proposed by the Finance Bill, 2017 has the effect of removing the restriction for the size of residential unit of 30 sq. meters, by increasing it to 60 sq. mtrs., in respect of places located within a distance of 25 km of the municipal limits of the four metropolitan cities of Chennai, Delhi, Kolkata and Mumbai. Clause(f)(i) of sub-section (2) is proposed to be amended to achieve this objective.

This amendment therefore enables construction of residential units of up to 60 sq. mtrs. at any place in India other than a place located within the municipal limits of the four metropolitan cities.

This amendment is sought to be made effective from 1st April, 2018 and is made applicable to A.Y. 2018-19 onwards.

Time for completion of project : The third important amendment proposed by the Finance Bill, 2017 has the effect of amending clause (b) of sub-sec (2) which hitherto requires that a housing project shall be completed within a period of three years from the date of approval by the competent authority. This limitation of 3 years is proposed to be substituted by a period of five years and as a result a housing project can be completed within a period of five years from the date of its approval.

All the three amendments are positive changes that will enable the development of the optimum size houses, suitable for a family, all over the country and will facilitate the availability of the houses at an affordable price assuming that the tax benefit or a part thereof is passed on by the developers to the actual users of residential units.

There is a strong case for the retrospective application of the proposed amendments to the housing projects which have already commenced and are otherwise eligible for the benefits of sec. 80IBA. In the matters of the area of the residential unit, location of the land and the period of completion of the project, the Government of India should come forward and specifically extend the benefit of the amendments to the existing projects for removal of any doubts.

Budget Surprise For 'Startups'

Ameet Roy

The word 'Startup' was just a fancy term used by young generation to denote their newly established business venture, until 16th January 2016, the day on which the revolutionary Startup Action Plan was introduced by the Government of India. With the sole motive to boost entrepreneurship in the country and motivate more and more people to start a business in the country and help India to turn itself into a 21st century super economy, the action plan promised supports to the startup enterprises by way of fund of fund of Rs. 10000 Cr. which will invest primarily in stratup enterprises and tax holiday for the stratup enterprises for a period of 3 years.

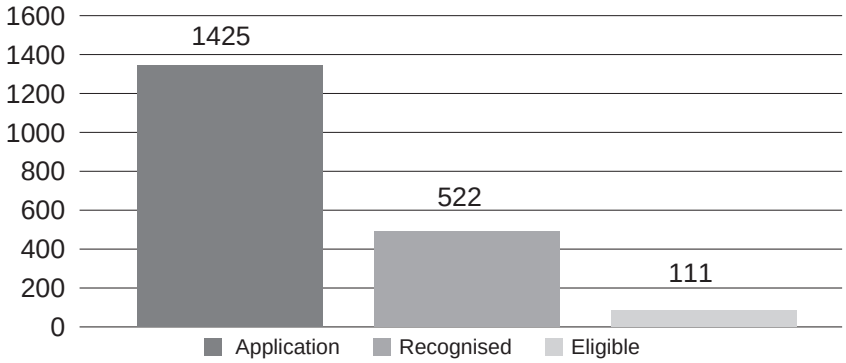
Budget 2016 failed to deliver the promise of the fund which the action plan suggested. However it delivered the promise of tax holidays. Later in the year there were reforms to help startups thrive by relaxing FDI norms for stratup enterprises and multiple other policies. Enterprises which came into existence post the introduction of the Startup Action plan are now entering into a phase where they will be in more need of fund than ever before. But investments seems to dry up as investors are starting to reach saturation and the investments made by them in stratups are yet to payback. Hence the Government needs to bring policy reforms which will enable these Startups to tap cheaper funds and keep pushing themselves to ultimately evolve as successful business ventures in the long run.

Startup Scenario

The Government has established Startup India Hubs throughout the country to provide handholding and support to the Startup enterprises in the process and recognition and registration as a Stratup. Since its inception on the 1st April 2016, it has handled over 27000 queries from Startups seeking clarifications pertaining to Certificate of Recognition as a "Startup", Certificate of Eligibility to avail tax benefits, seeking information on incubators or funding.

The Government of India jointly with Upgrad has launched Stratup India Learning Program, which is an interactive learning and development program aimed to educate the aspiring entrepreneurs of the various stages of entrepreneurship and equip them with necessary skills and knowledge required to run a business successfully.

There are a total of 522 enterprises recognized as stratups under the Stratup India Action Plan, out of which a total of 111 Startups has been considered as eligible for tax benefits by the Inter Ministerial Board. The graph below summarizes the success rate of Startups to be eligible to avail tax benefits.



Other supports

One of the prerequisites for being recognized as a Startup is – the enterprise must be commercializing some new or innovative business model or product, which should be backed by registered patent or copyright. To speed up the process, the Government has setup a panel of 422 facilitators for patent and designing and 669 facilitators for trademark filling. The

DIPP bears the cost of facilitation on behalf of the Startups and also rebates upto 80% of the statutory filling cost for patents.

The Insolvency and Bankruptcy Code 2016 has been published to help Startups wind up their business within a period of 90 days from making an application for the same. Apart from this the DIPP proposes to launch research parks, technology business incubators and Startup Centers throughout the country. For this, proposals has been received from National Expert Advisory Committee for 7 Research Parks, 15 Technology Business Incubators and 14 Startup Centers.

Fintechs

The sector which has witnessed the most developments in the Startup arena happens to be the Fintech sector. This sector which had no existence a few years back, has emerged to be the most happening one now.

The Indian Fintech industry is spread over a vast category –

1. Fintechs are new age business models, backed by technological innovation, that compete against and/or collaborate with financial institutions.

Fintech start-up firms engage in external partnerships with financial institutions, universities and research institutions, technology experts, government agencies, industry consultants and associations. Through these partnerships, they create a highly integrated ecosystem that brings with it the expertise, experience, technology and facilities of all the entities together.

1. Alternative Funding
2. Banking Tech
3. Crowd funding
4. Consumer Finance
5. Crypto Currency
6. Enterprise Finance
7. Foreign Exchange
8. Insurance Tech
9. Investment Tech
10. Mobile Wallets
11. Payments
12. Software for Institutional Investor

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While the function of most of the categories of function are not regulated, except for P2P lending and payments systems which needs to be regulated as they deal with public money and the security of public money is of utmost priority for any Government. P2P lending does not fall under the regulatory framework of RBI hence they are free from the strict regulatory requirements of RBI and can lend out to segments which gets left out due the stringent norms. Hence the alternative lending institutions has an edge over the banks and financial institutions and stands to charge higher rates of interest than the banks in order to make greater profits. However the alternative lending platform falls under the Usurious Loans Act, 1918. This Act give Courts of India the power to intervene into cases where interest rates happen to be excessively high, thus keeping a check on unfair rates of interest. Apart from this 22 of Indian states has Money Lending Acts, which needs to be complied with. Also the platform needs to acquire license from the state under the Act to carry out the business of lending.

The second category of Fintechs whose activities are regulated, happens to be the ones engaged in activities of e-wallets and payment services. These entities are required to be registered under the Payment and Settlement Systems Act with the RBI. The RBI here has stringent rules and regulation which needs to be adhered to carry out the activity of e wallets and payment services. This ensures security of information and public money which are routed through the servers of these Fintechs. Apart from this all other categories Fintech happen to be non-regulated, which poses both threats and opportunities for the business enterprise. India needs to clarify its regulatory scene for Fintechs, so as to help them thrive in the country.

Budget Outcome

While hopes were high from the Budget to bring in game changing policies for the Startup segment, it turned out to be disappointment, as the Budget targeted for the agricultural and rural sector development and upliftment.

The Budget however had some small offerings for the Startups in form of tax holidays for three consecutive years out of seven years from the incorporation on the enterprise instead of five years as provided by the "Startup Up India Action Plan". Therefore the eligible Startups are now in a position to claim tax holidays in years in which it makes highest profits in its initial seven years. Also the entity can carry forward its losses and set it off against its profits of subsequent years. However there is a twist in this offering, shareholders holding at least 51% of the voting powers of the company at the time of claiming the set off must have been shareholders of at least 51% of the voting powers of the Company during the year when it made losses. Therefore in spite of being a Budget for the poor, there has been significant reforms and motivation for the Startups to continue their business.

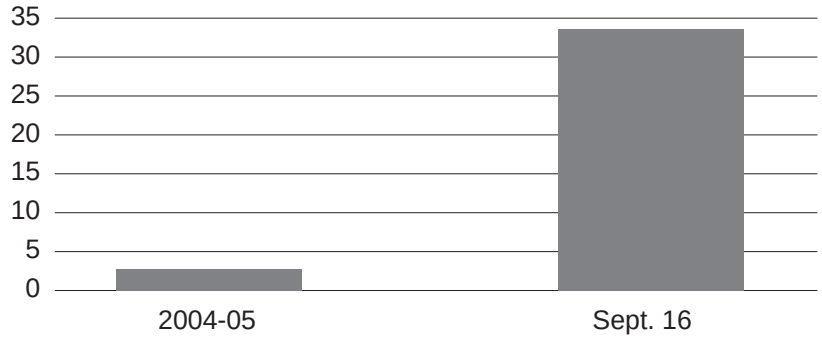
What's in store for Foreign Direct Investments in the Union Budget 2017

CS Vignesh Iyer

Foreign Direct Investment

The era of Modi Government has significantly contributed positively to the quantum of Foreign Direct Investment (FDI) inflows into the country into diverse sectors of the economy. This surge in the inflow of FDI has massively boosted up the performance and productivity of many sectors especially service sector, manufacturing sector etc and have attracted high FDI inflows.

The following statistics show the significant surge in the FDI inflow (in $ billion) in the country between 2004-05 and September, 2016:



The Department of Industrial Policy and Promotion (DIPP) on a quarterly basis maintains and updates the statistics of the FDI inflows in the form of a Fact Sheet.[1]

The FDI equity inflows (month-wise) during the calendar year 2016-17 as per the Fact Sheet[2] of DIPP are as follows:

Calendar Year 2016 (January - December)	Amount of FDI Equity inflows	
	(In Rs. Crore)	(In US$ mn)
January	33,461	4,975
February	21,268	3,117
March	16,530	2,466
April	22,345	3,362
May	13,271	1,983
June	15,111	2,245
July	27,430	4,081
August	32,150	4,803
September	34,366	5,149
Year 2016 (up to September, 2016) #	2,15,932	32,183
Year 2015 (up to September, 2015) #	1,68,192	26,517
% age growth over last year	(+)28%	(+)21%

Provisional Figures

The net FDI inflow has grown from 1.7% of GDP in FY 2016 to 3.2% in the second quarter of FY 2017.

The Government has opened up the doors for FDI inflow into crucial sectors like defence, railway infrastructure, pharmaceuticals etc. Expectations were set high for the Union Budget 2017 with regard to the FDI proposals with the Prime Minister keen on setting the Make-in-India movement a huge success and to make the country an attractive investment market.

According to the Economic Survey 2016-17[3] conducted by the Ministry of Finance during April-September 2016-17, FDI equity inflows were US$ 21.7 billion as compared to total FDI inflows of US$ 16.6 billion during April-September 2015-16 showing 30.7 per cent surge. This allowed India to become one of the world's largest receiver of foreign investment.

Budget 2017 proposals: Lid not yet lifted

The key amendments proposed in the Union Budget 2017 are as follows:

- The FDI Policy will be further liberalized significantly;
- The Foreign Investment Promotion Board (FIPB) is proposed to be abolished.

The Finance Minister in his budget speech informed that there has been an increase of 36% in the FDI inflow to the country despite 5% reduction in global FDI inflow and stressed on the fact that over 90% of the FDI inflows are now through automatic route. Further, he conveyed that the FIPB has successfully implemented e-filing and online processing of FDI applications and hence, the stage for phasing out FIPB has been reached.

The proposal to abolish FIPB is an unpredictable one from the Government as FIPB is the body responsible for processing of FDI proposals and making recommendations for Government approval with regard to the FDI Policy. The Finance Minister also informed that a detailed roadmap will be soon provided by the Government with regard to the implementation of the proposal to abolish FIPB.

Concessional rate of withholding tax on interest earned by foreign entities

Currently, under section 194LC and 194LD of the Income Tax Act, 1961[4] (Act, 1961), a concessional withholding rate of 5% is being charged on interest earned by foreign entities in External Commercial Borrowings (ECB) or in bonds, Government securities and Rupee Denominated Bonds (Masala Bonds). The concession under both these sections is available on the interest payable on or after the 1st day of June, 2013 but before the 1st day of July, 2017. The Finance Minister has proposed to extend the concession available for yet another 3 years i.e. till 1st day of July 2020. The proposed amendment to section 194LC and 194LD of Act, 1961 has been duly proposed through Finance Bill 2017.

Conclusion

The Finance Minister has not yet lifted the lid through his budget speech on the complete reforms/measures with regard to FDIs that the government proposes to implement. It was hardly a paragraph in the speech which circled around the FDI sector but considering the track record of the current government in liberalizing the FDI norms, it may be sure that the FDI Policy will soon be getting a blast of amendments.

The extension of the time period of the concessional rate of withholding tax charged on the interest paid to foreign entities for ECB, Government securities and Masala Bonds till 01.07.2020 will certainly make the overseas bond investors happy and will attract more scope of foreign investment in such bonds.

(Footnotes)

1 http://dipp.gov.in/English/Publications/FDI_Statistics/2016/ FDI_FactSheet_April_Sep_2016.pdf

2 http://dipp.gov.in/English/Publications/FDI_Statistics/2016/FDI_ FactSheet_April_Sep_2016.pdf

3 http://indiabudget.nic.in/es2016-17/echapter.pdf

4 http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx

Survey Action contemplated with regard to Cash Deposits in Banks post demonetisation

Advocate Narayan Jain

1. INTRODUCTION:

Post demonetisation of Rs.500 and Rs.1000 notes on November 8, 2016, several malpractices have been noticed. The Income Tax Department is enquiring/seeking information and analysing instances of deposits to identify cases involving risk of tax evasion. Based upon information of cash deposits collected and analysed by CBDT, a number of persons have been identified in whose case the cash transactions did not appear to be in line with their profile available with the Income-tax Department ('ITD'). In such cases, it has been decided to undertake on-line verification of select transactions through jurisdictional Assessing Officers ('AOs'). The Income Tax Department had recently sent letters to 18 lakh people who had deposited more than Rs.5 lakhs in cash in aggregate in their bank accounts.

2. CBDT INSTRUCTION DATED 21ST FEB. 2017 :

Central Board of Direct Taxes (CBDT) has issued Instruction No. 03/2017 dated 21.02.2017 containing Standard Operating Procedures (SOP) which is required to be followed by the Assessing Officers (AO) in verification of cash deposited in banks between 09th November, 2016 and 30th December, 2016. The salient features of the said Instruction dated 21.02.2017 are analysed in Para 6 to 14 hereinafter. This article highlights the actions like Issue of Notice u/s 133(6); Survey action u/s 133A and other key points contemplated in the said CBDT Instruction.

3. ISSUE OF NOTICE UNDER SECTION 133(6) :

In cases where online response has not been submitted even after service of letter, the ITS profile of such PAN holders may be viewed to access information reported in earlier returns and under TDS/AIR/CIB. **In case the cash deposit is not in line with the earlier return or information profile of the person under verification, necessary facts may be collected inter-alia by exercising the powers under section 133(6) with the approval of prescribed authority as mentioned in para 7.2 of the Instruction dated 21.02.2017.**

"7.2 If the total value of transactions is below Rs.10 lakh (Rs.25 Lakh in Delhi, Mumbai, Kolkata, Chennai, Bangalore, Pune, Hyderabad and Ahmedabad), the prescribed approving authority will be Additional/Joint CIT heading the Range. For cases where the total value of transactions in a particular case exceeds the above limits, the prescribed approving authority will be the Pr. CIT concerned."

In case any Notice is received u/s 133(6) of the Income Tax Act, the same should be properly complied with giving necessary particulars. In case of physical response, it is advisable to furnish relevant evidences also.

4. SURVEY CAN BE CARRIED OUT UNDER SECTION 133A :

4.1 In the said Instruction No. 3 dated 21.02.2017, it has been stated in para 8 that **in appropriate cases depending upon the online response or otherwise, survey action u/s. 133A can be considered.** During survey, where there is suspicion of back dating or fictitious cash transactions, CCTV recording of the cash counter at relevant banks may also be checked, if necessary. **Reference can also be sent to the Investigation wing in appropriate cases.** However in cases of intrusive actions like issue of Notice u/s 133(6) or Survey u/s 133A or reference to Investigation Wing, the outcome needs to be reported by the A.O. in the online portal also. The Powers of Survey and related issues are discussed hereinafter.

4.2 **When survey can be conducted u/s 133A :** The Income Tax Authority may enter any place of business or profession for survey only during business hours and in any other place only after sunrise and before sunset. It has been decided in the case of N.K. Mohnot v. DCIT [1995] 215 ITR 275 (Mad.) that for survey, once Income Tax Authority enters business premises of assessee during business hours, survey may continue till it is completed notwithstanding the fact that survey would spill over beyond business hours.

4.3 **The places, where survey can be conducted :** The survey can be conducted at the following places :

(i) The place within the limits of area assigned to such I.T. authorities where the business or profession is carried on.

(ii) Any place occupied by any person in respect of whom the income tax authorities have jurisdiction, where the assessee carries on his business or profession.

(iii) If a person is assessed by an income tax authority different from the territorial jurisdiction, survey can be carried out by both his assessing income tax authorities as well as by his territorial jurisdiction income tax authorities.

(iv) Any place in respect of which he is authorised for the purposes of this section, by such income tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place.

(v) The above places, may be head office or branch offices of the person concerned.

(vi) Survey can also be conducted at any other place where the assessee states that his books of account and other documents or any part of his cash or stock or other valuable articles or things relating to business or profession are kept. However, an important point is to be kept in mind that statement of proprietor/ partner/director is the prerequisite to bring such other place within the ambit of survey u/s 133A. Generally in case of surveys it is explained that books of account or cash has been kept at the residence of proprietor or partners or stock is lying with some parties for processing. In such situation all such places come within the purview for survey u/s 133A. In cases, where part of rent of residential premises and electricity are claimed as business expenditure on the ground that business is partly carried from there, survey u/s 133A can be conducted at such premises.

(vii) However, the business or residential premises of third parties including Chartered Accountant, a pleader or income tax practitioner of whom the assessee is a client, are not the places where survey can be conducted in respect of a particular assessee [CBDT Circular No. 7D(LXIII-7) of 1967 dated 3.5.1967].

(viii) The IT authority does not assume any power to enter the business premises/ Office of the CA/Lawyer/Tax Practitioner to conduct survey u/s 133A of the Income Tax Act in connection with survey of the premises of their client unless the client states in the course of survey that his books of account/ documents and records are kept in the office of his CA/Lawyer/Tax Practitioner- **U.K. Mahapatra and Co. v. Income -Tax Officer [2009] 308 ITR 133 (Ori.).**

4.4 **Obligations of the owner, employee or any other person attending the business at the time of survey :** As per section 133A(1)(c), such obligations are as under :-

(i) to afford necessary facilities to inspect such books of account or other documents as the Income Tax authorities conducting the survey may require and which may be available at such place,

(ii) to afford necessary facility to check or verify the cash, stock or other valuable articles or things, which may be found at the place of survey, and

(iii) to furnish such information as may be required by such authority in relation to any matter which may be useful for, or relevant to, in any proceeding under the Income-tax Act.

4.5 **Powers of I.T. authorities with regard to survey operation u/s 133A :** The I.T. authorities (other than Inspector of Income-tax) has the following powers with regard to survey operation u/s 133A(3):

(i) To inspect books of account or other documents which may be available at the place of survey. They may place marks of identification and make extracts and copies therefrom.

(ii) They may check or verify the cash, stock or other valuable articles or things which may be found at the place of survey. They may make inventory of such assets.

(iii) They are not authorised to retain in custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be.

(iv) They may obtain such information which may be useful or relevant for income-tax proceedings, which might have been

finalised or which may be pending or may be initiated after the date of survey.

(v) They may record statement of any person which may be useful or relevant to such proceedings under the Income-tax Act. [The Apex court in the case of **CIT v. S. Khader Khan Son [2013] 352 ITR 480 (SC)** afirmed the view of the Madras High Court in 300 ITR 157 that no officer has power u/s 133A to administer oath and take a sworn statement].

(vi) Having regard to the nature and scale of expenditure incurred by an assessee in connection with any function, ceremony or event, the I.T. authority may call for relevant information. They can also record statement of the assessee or any person in this respect, but these powers can be exercised only after the performance of function, ceremony or event.

The Inspector has power only in respect of (i) and (vi) above.

Thus in case an inspector records statement on oath or prepares cash or stock inventories, he acts beyond his power and is illegal. (ITO v. Jewells Emporium decided by Indore Bench of ITAT 48 ITD 164).

It may be noted that the I.T. authorities have no power to remove any cash, stock or other valuable articles or things during the course of survey u/s 133A. Such powers are available only during the course of search and seizure. (Regarding power for impounding of books of account etc., see next para).

4.6 **Whether books of account and other documents can be impounded/seized in course of survey u/s 133A :** As per clause (ia) to section 133A(3), the Income-tax Authority other than the inspector had been empowered to impound books of account or other documents inspected by him in the course of survey u/s 133A.

The period for retention of books of account or documents impounded during survey is 15 days (exclusive of holidays) without obtaining approval of the Principal CCIT or CCIT or Principal DGIT or DGIT or the Principal CIT or the CIT or the Principal Director or the Director, as the case may be. The said period of 15 days can be extended with the approval of the Principal CCIT or CCIT or Principal DGIT or DGIT or the Principal CIT or the CIT or the Principal Director or the Director, as the case may be.

4.7 **Meaning of proceeding with regard to survey *u/s 133A :*** Explanation (b) to section 133A provides that proceeding means any proceeding under the Income Tax Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and **includes also all proceedings under the Income Tax Act, which may be commenced after such date in respect of any year. The assessment proceedings with regard to cash deposited after demonetization and within 30th December, 2016 will obviously fall in FY 2016-17 relevant to assessment year 2017-18.**

4.8 **If a person refuses or evades to furnish any information or refuses to have his statement recorded in course of survey :** In case of such refusal during survey the I.T. authorities may exercise powers as are vested in a Court under Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters :

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of Banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

4.9 **Whether information or extracts of books of account collected in course of survey u/s 133A, may be used in assessment :** Yes, the same can be used for the purpose of assessment but the A.O. should give an opportunity to the assessee to explain the same. It will be relevant to refer the case of Dr. Vijay Kumar v. ITO 80 Taxman 201,

However, as decided by Allahabad High Court in the case of Baleshwar Flour & Oil Mills v. C.S.T. [1987] 67 STC 450, when the material recovered in a survey related to a year other than the relevant assessment year, then the same could not be used for the rejection of the account books for different years.

4.10 **Whether the presence of a tax consultant or legal advisor is permitted during survey :** As regards the presence of legal advisors during survey proceedings, there is no express prohibition in statute prohibiting presence of counsel during interrogation and as such during survey proceedings legal advisors may be called upon to be present.

4.11 **Whether I.T. authority conducting survey may obtain confession regarding undisclosed income or cash deposited in Banks: It may be mentioned that the Prime Minister Garib Kalyan Yojna 2016 (PMGKY) is in operation upto 31st March, 2017 and the purpose of**

making enquiry by various modes by the Income Tax department with regard to cash deposited after demonetization is to find out whether the said cash is explainable or not to the satisfaction of the A.O.

However, in this context, the **CBDT Instruction F. No. 286/2/2003 - IT (Inv.) dated 10.3.2003** regarding Confession of additional income during the course of search & seizure and **survey operation** is relevant. The same is summarised as below-

"Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and **survey operations**. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search & seizures and **survey operations no attempt should be made to obtain confession as to the undisclosed income.** Any action on the contrary shall be viewed adversely. Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

However it is advisable for the taxpayers to analyse the facts and situation themselves and take a call. If they are in a comfortable position they should furnish proper explanation about the cash deposited. In appropriate cases. it may be better to declare the amount as Income under the ***PMGKY by paying requisite Tax etc aggregating to 49.9 per cent and also deposit 25 per cent of undisclosed income in designated bank account for 4 years without any Interest.***

4.12 **Whether confession obtained u/s 133A has evidentiary value :** Statement recorded u/s 133A, is not recorded on oath, therefore, the same is not a conclusive piece of evidence and has no evidentiary value - **CIT v. Sunrise Tooling System P. Ltd. [2014] 361 ITR 206 (Delhi); CIT v. P. Bala Subramanian [2013] 354 ITR 116 (Mad); CIT v. Shader Khader Khan Son [2013] 352 ITR 480 (SC); ACIT v. Maya Trading Co. [2013] 34 taxmann.com 144 (Agra-Trib).** Assessment made only on the basis of confession may not be sustained- **Gajjam Chinnayellapa v. ITO [2015] 370 ITR 0671 [Telangana & AP HC), CIT v. Ashok Kumar Jain [2014] 369 ITR 0145 (Raj. HC).**

5. TAX AS PER AMENDED SECTION 115BBE & PENALTY :

It is advisable for taxpayers as well as tax professionals to consider the CBDT Instruction No. 3 dated 21.2.2017 as well as guidelines annexed thereto and take a proper decision in the matters of cash deposited. It may be noted that section 69 empowers to treat the unexplained investments as income of the assessee. Likewise section 69A deals with Unexplained money etc. and the A.O. may consider it as the income of the assessee. In case amount of investment is not fully disclosed in books of account, the excess amount may be deemed to be income of the assessee u/s 69B.

Further it may be kept in mind that as per section 115BBE, [as amended by The Taxation Laws (Second Amendment) Act, 2016], the tax, penalty and education cess shall be charged in aggregate @77.25 per cent if any income is disclosed by the assessee himself u/s 68, 69, 69A, 69B, 69C, or section 69D. Further in case the A.O. makes any addition under the said sections, a penalty of 10 per cent of tax payable (that is10 per cent of 60 per cent) shall also be payable u/s 271AAC. That means the overall burden of tax, penalties and education cess may be as much as 83.25 per cent.

6. OVERVIEW OF ONLINE VERIFICATION

The online verification has been enabled on e-filing portal (for persons under verification) which will be synchronized with the internal verification portal (AIMS module of ITBA) of ITD. The salient features of online verification mechanism, as mentioned in CBDT Instruction dated 21.2.2017, are as under:

6.1 ITD has enabled online verification of these transactions to reduce compliance cost for persons under verification while optimizing its resources. The information in respect of these cases has been made available in the e filing window of the PAN holder (after log in) at the portal https://incometaxindiaefiling.gov.in. The PAN holder can view the information using the link **'Cash Transactions 2016' under 'Compliance' section of the portal**. The person under verification will be able to submit online explanation without any need to visit Income Tax office.

6.2 Email and SMS were sent to the persons under verification for submitting online response on the e- filing portal. Such persons who are not yet registered on the e-filing portal (at https://incometaxindiaefiling.gov.in) should register immediately by clicking on the 'Register Yourself link. Registered taxpayers should verify and update their email address and mobile number on the e- filing portal to receive electronic communication.

6.3 The user guide, quick reference guide and **frequently asked questions** ('FAQs') are available on the portal for assisting the person under verification for submitting online response.

6.4 **Cases meeting the low risk criteria will be closed centrally. Cases which are not closed automatically will be pushed in batches to the AO for verification.**

6.5 The AO will be able to view each information record, information as submitted by the person under verification for each record and also capture the verification result. In case additional information is required, the AO will be able to send a request for additional information electronically. The person concerned will also be automatically informed about the request for additional information by email and SMS. The information request will be visible to the person under verification with a hyperlink for uploading information. **All the additional documents (including supporting evidence) are required to be submitted online.**

6.6 The response filed by person under verification will be appraised against available information. The uploaded information can be downloaded by the Assessing Officer. In case explanation of source of cash is found justified, the verification will be closed by the AO electronically without any physical interface with the person concerned.

7. REFERENCE DOCUMENTS

A Cash Transactions 2016 **User Guide and Frequently asked Questions** ('FAQs') has been prepared by CBDT to help the persons under verification so that the process of furnishing online information is clearly understood *(available in the help section of the e-filing portal home page).* Further, a 'User Guide for Verification of Cash Transactions on ITBA - AIMS Module' ('Verification Guide) has also been prepared for assisting the AOs involved in the verification process. It is advised that all stakeholders may go through the documents before filing response/initiating action.

8. ENSURING ONLINE RESPONSE

It is seen by the Income tax department that many persons in the target segment have still not registered with e-filing portal. Further many registered persons who are under verification have not yet submitted online response. Pr. CCIT/CCIT/Pr. CIT/Range Heads are expected to give publicity and organize meetings with the taxpayer community and CAs/Bar Associations to educate them about the online verification facility and its benefits. So far, communication with the person under verification has been made under section 133C of the Income-tax Act, 1961 ('Act'). In cases where online response has not been submitted, AO shall generate a letter from the Verification portal on ITBA to the person under verification for submission of online response (except when immediate survey is contemplated) on the e-filing portal and ensure its service. This process should be completed within 7 days of availability of information on the portal.

9. CONDUCTING VERIFICATION

The said CBDT Instruction says in Para 5 that it should be clearly understood that this exercise relates to preliminary verification of information only and the same should not be construed as conducting scrutiny or in-depth authentication. The entire process envisages end-to-end e-verification in which the concerned person would be required to electronically file his response on e-filing portal which shall be examined and monitored electronically by the tax department through Online Verification platform (ITBA). The two systems are harmonized in a manner so that the person under verification is not required to attend the Income-tax office personally under any circumstance and at any stage during the verification exercise. It has been endeavour of CBDT to identify and target the potential cases through e-verification so that possible instances of grievances arising from the process of verification are minimized.

9.1 The online verification should be focussed and limited to the issue under verification the outcome of which is either 'Acceptable' or 'Non-Acceptable'. The queries raised should be relevant and limited in number since this is a preliminary verification process only.

9.2 The Assessing Officer is required to verify each information record individually and take a decision about each record being 'Acceptable' (where the nature and source of cash deposit for that particular record is explained by the person under verification to the prima-facie satisfaction of the Assessing Officer) or 'Non-Acceptable' (where the Assessing Officer is not satisfied with the explanations offered by the person under verification based on the information available). For each 'Non-Acceptable' information record, the undisclosed income will have to be ascertained

and recorded along with verification remarks on the portal [the format has been reproduced in the Verification Guide].

9.3 The information relating to cash transactions and response submitted by the person under verification will be visible to the Assessing Officer and his supervisory officers.

9.4 The Assessing Officer will also be able to send a request for additional information, if required. The information request would be communicated to the PAN holder with a Hyperlink for uploading the information. The uploaded information can also be downloaded by the Assessing Officer.

9.5 It is reiterated that no independent enquiry or third party verifications are required to be made by the Assessing Officer outside the online portal. Whatever information is necessary during verification, the same has to be collected through the person under verification using online platform only. Even telephonic queries are to be avoided.

9.6 While conducting verification, seeking additional information and drawing inference regarding source of deposits in bank or other accounts, for general and broad guidance of the AOs, the source specific verification guidelines has been given in the *Annexure* with a view to maintain consistent approach during verification. If the sources informed by the person under verification are other than those indicated in the Annexure, suitable parameters should be decided by the AO in consultation with the range head and Pr. CIT concerned.

9.7 It should be ensured that the communications made online with the persons under verification should be in very polite language without containing any element of threat or warning. No show cause of any kind should be given.

9.8 The verification of a particular case shall be complete only when:

(*a*) each information record reflected in that case gets verified and has been marked either as 'Acceptable' or 'Non-Acceptable' (with mentioning of undisclosed income in the latter category); and

(*b*) Approval has been given by the supervisory authority as prescribed at Para 7 of this instruction.

9.9 If no satisfactory explanation is provided, the undisclosed income may be quantified considering the facts of the case. Brief summary of verification may be mentioned under verification remarks.

9.10 The cases under the 'Non Acceptable' category would get escalated back to the Directorate of Systems and may lead to advance processing of such cases for further handling as cases involving possible tax- evasion.

9.11 In case the person under verification does not respond within the time frame prescribed, it might lead to a possible inference that the cash deposit under verification is prima-facie undisclosed and consequently the AO may treat these cases under the 'Non Acceptable' category with relevant remarks.

9.12 A holistic view should be adopted looking into the various aspects of the circumstances leading to deposit of cash (e.g. family-size, financial status and background of person) and uniformity in approach must be adopted while forming a view about quantum of undisclosed income.

10. ADHERENCE TO THE TIME-LIMIT DURING VERIFICATION : As per Para 6 of the said Instruction of CBDT -

10.1 It shall be necessary to complete the process of online verification as quickly as possible so that the option to avail the benefits under the Prime-Minister Garib Kalyan Yojana, 2016 ('PMGKY') can be exercised by the persons under verification by the prescribed date for the said scheme. It will be desirable if the additional information required from the person under verification is communicated to the taxpayer within 5 working days (wherever considered necessary), from the receipt of online information from such person.

10.2 The Pr. CIT concerned should frame the intervening timelines depending upon the number of cases and content of information handled by the Assessing Officer in the charge.

10.3 The Additional/Joint CIT will monitor the adherence to the above time schedule and guide AOs wherever required.

11. APPROVAL FROM HIGHER AUTHORITIES - As per Para 7 of the said Instruction of CBDT -

11.1 After all information records of a particular person have been verified by the AO, he would be required to take approval for closure of verification from the prescribed approving authority.

11.2 If the total value of transactions is below Rs. 10 lakh (Rs.25 Lakh in Delhi, Mumbai, Kolkata, Chennai, Bangalore, Pune, Hyderabad and Ahmedabad), the prescribed approving authority will be Additional/Joint CIT heading the Range. For cases where the total value of transactions in a particular case exceeds the above limits, the prescribed approving authority will be the Pr. CIT concerned.

11.3 The above approvals would be through online portal only for which the procedure has been specified in the Verification Guide.

11.4 The time-frame prescribed above in Para 6 will be

inclusive of the time involved in granting approval by the prescribed approving authority.

12. DEALING WITH NON-COMPLIANCE : As per Para 8 of the said Instruction of CBDT in cases where online response has not been submitted even after service of letter, the ITS profile of such PAN holders may be viewed to access information reported in earlier returns and under TDS/AIR/CIB. In case the cash deposit is not in line with the earlier return or information profile of the person under verification, necessary facts may be collected inter-alia by exercising the powers under section 133(6) with the approval of prescribed authority. In appropriate cases depending upon the online response or otherwise, survey action u/s. 133A can be considered. During survey, where there is suspicion of back dating or fictitious cash transactions, CCTV recording of the cash counter at relevant banks may also be checked, if necessary. Reference can also be sent to the Investigation wing in appropriate cases.

In cases of intrusive actions [133(6)/133A/ref. to Inv. Wing], the outcome needs to be reported by the AO in the online portal also.

13. INITIATION OF PENALTY PROCEEDINGS UNDER SECTIONS 269SS/ 269T OF THE ACT

As per Para 9 of the said Instruction of CBDT in case, the transaction being loan received/ repaid in cash above the permissible threshold comes to notice, the AO may consider initiation of penal proceedings under the relevant provisions separately..

14. Source Specific General Verification Guidelines – Such guidelines are appearing in Annexure to the said CBDT Instruction. The important points are discussed herein.

a) Cash out of earlier income or savings – As per Para 1 of the Annexure the guidelines are as under-

1.1 In case of an individual (other than minors) not having any business income, *no* further verification is required to be made if total cash deposit is up to Rs. 2.5 lakh. In case of taxpayers above 70 years of age, the limit is Rs. 5.0 lakh per person. The source of such amount can be either household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc.

1.2 In case the individual claims that cash deposit includes savings of other person(s), the necessary information is required to be submitted under Para 4 or Para 5 below, as the case may be.

1.3 In case of an individual having no business income, if the cash out of earlier income or savings exceeds the above mentioned threshold, the AO needs to consider the remarks provided by the person under verification and seek further relevant information. During verification, the AO needs to consider the information provided by the person concerned, income earned during past years, source of such income, filing of ROI and income shown therein, cash withdrawals made from accounts etc. before quantifying the undisclosed amount, if any. In case the person under verification has filed return of Income, a reasonable quantum can be considered as explained while quantifying the undisclosed amount, if any.

1.4 In case of persons engaged in business or requirement to maintain books of accounts, no additional information is required to be submitted by the person under verification if total cash out of earlier income or savings (sum of responses for all cash transactions) is not more than the closing cash balance as on 31st March 2016 in the return for AY 2016-17. However, if the AO has reason to believe that the closing cash balance as on 31st March 2016 has been increased by revising the return or backdating transactions in the books of account, further verification may be carried out.

1.5 In case of persons engaged in business or required to maintain books of accounts, if total cash out of earlier income or savings (sum of responses for all cash transactions) is more than the closing cash balance as on 31st March 2016 in the return for AY 2016-17, the AO needs to consider the remarks provided by the taxpayer and seek relevant information, i.e. closing balance as on 31st March 2016 as reflected in the books of account. During verification, the AO may consider the information provided by the person under verification, income earned during past years, source of such income, filing of ROI and income shown therein, cash withdrawals made from accounts etc. before quantifying the undisclosed amount, if any.

1.6 If the person under verification has claimed that the cash deposit has been disclosed in IDS 2016 and if the same is found to be correct, no further verification should be made.

1.7 In case, there is information or apprehension/ suspicion that a particular bank account(s) has been misused for money laundering/tax evasion/entry operations in shell companies, the monetary cut-off or cash-balance based cut off

prescribed in clauses above requiring no-verification, shall not be applicable.

b) Cash out of receipts exempt from tax - As per Para 2 of the Annexure the guidelines are as under-

If the cash is explained to be out of receipts exempt from tax, and the same is not in line with the earlier returns filed by the person under verification, the AO needs to consider the remarks provided by the person and seek relevant information (e.g. records of land-holding and other relevant evidences etc. in case of agricultural income), to form appropriate view and quantify unexplained income.

c) Cash withdrawn out of bank account - As per Para 3 of the Annexure the guidelines are as under-

1.1 The AO needs to consider the remarks provided by the person under verification and seek relevant information i.e. copy of bank statement/passbook to form appropriate view and quantify unexplained income.

1.2 Bank statement/passbook may be verified to confirm the name of the account holder. The date and amount of cash withdrawals and cash deposits in the bank account may be matched to verify whether claim that the cash deposited is out of cash withdrawn out of bank account is acceptable. Further removed in time the withdrawal is from the date of demonetization i.e. 8th November, 2016, the more suspicious it looks. The AO should take a balanced view in analyzing the time gap from the point of view of normal human behaviour and specific circumstances of the case.

d) Cash received from identifiable persons (with PAN) - As per Para 4 of the Annexure the guidelines are as under-

1.1 No additional information is required to be submitted by the person under verification as the information will be pushed to the AO of the identifiable persons (with PAN).

1.2 In case the identifiable person (with PAN) does not confirm the transaction, the response will be referred back for further verification.

1.3 In case of a gift, it may be seen whether the same is taxable in the hands of the recipient under section 56(2) of the Act.

e) Cash received from identifiable persons (without PAN) - As per Para 5 of the Annexure the guidelines are as under-

1.1 The AO needs to verify if the cash receipts are not in line with the normal practices of concerned business as mentioned in the earlier returns of Income after considering the remarks provided by the taxpayer, nature of business and earlier history before seeking additional information.

1.2 In case of other cash receipts, strategies for verification may be made in consultation with the Pr. CIT so that consistency is maintained in the entire charge based on nature of transaction.

f) Cash received from un-identifiable persons - As per Para 6 of the Annexure the guidelines are as under-

1.1 The AO needs to verify if the cash transactions or its quantum are not in line with the normal practices of concerned business as mentioned in the earlier returns of Income.

1.2 During verification, the AO may seek relevant information e.g. monthly sales summary (with breakup of cash sales and credit sales), relevant stock register entries, bank statement etc. to identify cases with preliminary suspicion of back-dating of cash sales or fictitious sales. Some indicators for suspicion of back dating of cash sales or fictitious sales could be :

i. Abnormal jump in the cash sales during the period Nov to Dec 2016 as compared to earlier history.

ii. Abnormal jump in percentage of cash sales to unidentifiable persons as compared to earlier history.

iii. More than one deposit of specified bank notes in the bank account late in the demonetization period.

iv. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases.

v. Transfer of deposited cash to another account/entity which is not in line with earlier history.

1.3 In case of receipt of cash on account of donation, indicators similar to above may be kept in mind.

1.4 In case of other cash receipts, strategies for verification may be made in consultation with the Pr. CIT.

g) Cash Disclosed/ to be disclosed under PMGKY - As per Para 7 of the Annexure the guidelines are as under-7.1 In case the taxpayer mentions that the Cash Disclosed/to be disclosed under PMGKY, the same may be verified.

1.1 If the process of disclosure is informed to be pending, verification can be kept pending till the evidence is furnished.

1.2 The verification should be closed on the basis of evidence of disclosure made under PMGKY.

15. CONCLUSION :

It is advisable for taxpayers to make proper and timely compliance where cash has been deposited and information appears on the department's website or any notice or SMS or email has been received from Income Tax Department.

The article was also carried in [2017] 78 Taxmann.com 310 (Article). Our thanks to Taxmann.

Direct Tax – Recent Circulars & Notifications

CA Aditi Anand

CIRCULARS

1. **Circular No. 41 /2016 dated 21st December, 2016**

   Section 9 of the Income - Tax Act, 1961 - Income deemed to accrue or arise in India

   Release of clarifications and FAQ (Frequently Asked Questions) on indirect transfer provisions under the Income Tax Act, 1961.

2. **Circular No. 42 /2016 dated 23rd December, 2016**

   Issue of clarifications /FAQ (Frequently Asked Questions) on the Direct Tax Dispute Resolution Scheme, 2016.

3. **Circular No. 43 /2016 dated 27th December, 2016**

   Issue of Explanatory Notes on provisions of taxation and investment regime for Pradhan Mantri Garib Kalyan Yojna, 2016

4. **Circular No. 01 /2017 dated 2nd January, 2017**

   Section 192 of the Income Tax Act, 1961 – Deduction of Tax at Source from Salary

   Issue of instructions with regard to tax deduction at source from Salary Income during the Financial Year 2016 – 2017. The circular provides clarification on the rates of deduction of Income Tax from payment of Income under the head Salaries during the financial year 2016 – 2017 and explains related provisions of the Income Tax Act, 1961 and Income Tax Rules, 1962.

5. **Circular No. 02 /2017 dated 18th January, 2017**

   Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojna, 2016

   Clarification issued in the Form of FAQ (Frequently Asked Questions) with regard to certain provisions of the Pradhan Mantri Garib Kalyan Yojna, 2016 wherein persons with undisclosed Income can pay tax, surcharge and penalty totalling to 49.9 % and make a mandatory deposit of not less than 25% of the undisclosed income under the Scheme.

6. **Circular No. 03 /2017 dated 20th January, 2017**

   Release of Explanatory Notes containing amendments introduced by the Finance Act, 2016.

7. **Circular No. 04 /2017 dated 20th January, 2017**

   Operation of Circular No. 41/2016 dated 21st December, 2016 kept in abeyance for the time being in Force

   Clarifying the fact that Circular No. 41/2016 dated 21st December, 2016 providing clarifications on Indirect Transfer Provisions under the Income Tax Act, 1961 has been kept in abeyance in light of various representations received from various entities including FIIs, FPIs, VCFs and other stake holders.

8. **Circular No. 05 /2017 dated 23rd January, 2017**

   Clarification on Circulars 21/2015 dated 10th December, 2015 and 08/2016 dated 17th March, 2016

   With a view to reduce litigations, it was clarified that appeals /SLPs are not to be filed in cases where the tax effect does not exceed the monetary limits specified under Para 3 of Circular 21/ 2015. It was also clarified therein that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed in the said Circular. Tax authorities were directed not to file appeals in violation of instructions contained in the aforementioned Circulars. Further, appeals that may already have been filed in violation of the prescribed instructions were directed to be withdrawn.

9. **Circular No. 06 / 2017 dated 24th January, 2017**

   Clarification issued with regard to the guiding principles to be followed for the determination of Place of Effective Management (POEM) as introduced by the Finance Act, 2015 to establish whether a Company will be said to be resident in India for a given previous year.

10. **Circular No. 07 / 2017 dated 21st January, 2017**

    Clarification issued with regard to certain queries about implementation of General Anti Avoidance Rule pertaining to Section 95 of the Income Tax Act, 1961 on the recommendation of the Working Group constituted for this purpose.

11. **Circular No. 08 / 2017 dated 23rd February, 2017**

    Clarification issued with regard to determination of the Place of Management (POEM) of a Company other than an Indian Company stating that POEM

Guidelines will not be applicable to a Company having turnover or Gross Receipts Rs. 50 Crores or less in a financial year.

12. **Circular No. 09 / 2017 dated 14th March, 2017**

Clarification issued on the Taxation and Investment Regime under the Pradhan Mantri Garib Kalyan Yojna, 2016 stating that where the undisclosed income is represented in the form of deposits in an account maintained with a specified entity, it is not necessary that the said deposits should exist on the date of making payments under the Scheme or furnishing a declaration under the Scheme. However, where the undisclosed income is represented in the form of cash, it was clarified that such cash should exist on the date of making payment of tax, surcharge and penalty under the Scheme or on the date of making deposit under the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016, whichever is earlier.

NOTIFICATIONS

1. **Notification No. 115 / 2016 dated 16th December, 2016**

17th December, 2016 notified as the date when the Pradhan Mantri Garib Kalyan Yojna, 2016 will come into force and 31st March, 2017 notified as the date before which a person may make a declaration under the aforesaid scheme.

2. **Notification No. 116 / 2016 dated 16th December, 2016**

Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana Rules, 2016 for the purpose of the Pradhan Mantri Garib Kalyan Yojna, 2016 prescribed. Form 1 for making declaration under Section 199C of the Finance Act, 2016 in respect of the prescribed Rules and Form 2 for the purpose of issue of Certificate of Declaration by the Principal Commissioner / Commissioner also prescribed.

3. **Notification No. 117 / 2016 dated 16th December, 2016**

Income Tax Officers (Principal Commissioner and Commissioner) for the purpose of Declaration filed manually or Electronic Verification Code generated in respect of the Pradhan Mantri Garib Kalyan Yojna, 2016 notified.

4. **Notification No. 118 / 2016 dated 16th December, 2016**

Joint Secretary (Marketing), Ministry of Petroleum and Natural Gas, Government of India, notified as Authority for the purpose of Clause (a)(ii) of Section 138(1)of the Income Tax Act, 1961.

5. **Notification No. 119 / 2016 dated 16th December, 2016**

Corrigendum to Notification No. 114 / 2016 dated 14th December, 2016 with respect to special measures in regard of transactions with persons located in the Notified Jurisdiction Area of Cyprus.

6. **Notification No. 120 / 2016 dated 21st December, 2016**

Notification of the Income Tax (35th Amendment) Rules to provide for amendment in Rule 114 F of the Income Tax Rules, 1962.

7. **Notification No. 121 / 2016 dated 26th December, 2016**

The Government of India vide its Notification No. number S.O. 51 (E), dated the 8th January, 2008 had framed and notified a scheme for formation of an Industrial Park by virtue of the powers conferred to it by clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961. The Government has now notified the undertaking being developed, maintained and operated by M/s. Devraj Infrastructure Ltd. for the purpose of clause (iii) as outlined above subject to terms and conditions prescribed in the annexure accompanying the Notification.

8. **Notification No. 122 / 2016 dated 27th December, 2016**

The Fourth Schedule to the Income-tax Act, 1961 deals with provisions governing the Recognised Provident Funds (Part A) and Approved Superannuation Funds (Part B). Part A of the Fourth Schedule provides for application, definitions, criteria for according and withdrawal of recognition of the fund, conditions to be satisfied etc. Rule 15(1)(bb) of the Part A empowers the CBDT to make rules regulating the investment or deposit of the moneys of a recognised provident fund. Accordingly, Rule 67 deals with the provisions governing the investment of fund moneys. Vide this Notification, Rule 67(2) has been substituted. The amended Rule is deemed to have come into force retrospectively from 1st April, 2016.

9. **Notification No. 123 / 2016 dated 28th December, 2016**

Amendment made to Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Rules, 2015 by insertion of Rules 13, 14 and 15 . Form 8 prescribing the format for application for registration as an approved valuer under sub section 1 of section 77 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was also notified.

10. **Notification No. 124 / 2016 dated 29th December, 2016**

    Notification No. 34 / 2016 dated 26th May, 2016 amended whereby the designated date on or before which a person could make a declaration to the designated authority in respect of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016 revised from 31st December 2016 to 31st January 2017.

11. **Notification No. 01 / 2017 dated 2nd January, 2017**

    Notification of approval accorded to TATA Translational Cancer Research Centre (TTCRC) under the aegis of TATA Medical Centre Trust for the purpose of clause (ii) of sub section (1) of Section 35 of the Income Tax Act, 1961 read with Rules 5C and 5D of the Income Tax Rules, 1962 from the Assessment Year 2016 – 2017 onwards in the category of Scientific Research Association with regard to allowance of deduction on account of Scientific Research Expenditure.

12. **Notification No. 02 / 2017 dated 2nd January, 2017**

    Income-tax Rules have been amended to provide that bank shall obtain and link PAN or Form No. 60 (where PAN is not available) in all existing bank accounts (other than Basic Savings Bank Deposit Account) by 28th February, 2017, if not already done. In this connection, the RBI, vide circular dated 15th December 2016, has mandated that no withdrawal shall be allowed from the accounts having substantial credit balance/deposits if PAN or Form No. 60 is not provided in respect of such accounts. The banks and post offices have also been mandated to submit information in respect of cash deposits from 1st April, 2016 to 9th November, 2016 in accounts where the cash deposits during the period 9.11.2016 to 30.12.2016 exceeds the specified limits. It has also been provided that person who is required to obtain PAN or Form No.60 shall record the PAN/Form.No.60 in all the documents and quote the same in all the reports submitted to the Income-tax Department.

13. **Notification No. 03 / 2017 dated 2nd January, 2017**

    A revised Agreement between India and Cyprus for the Avoidance of Double Taxation and the Prevention of Fiscal evasion (DTAA) with respect to taxes on income, along with its Protocol, was signed on 18th November, 2016 in Nicosia, which will replace the existing DTAA that was signed by two countries on 13th June 1994. New DTAA provides for source based taxation of capital gains arising from alienation of shares, instead of residence based taxation provided under the existing DTAA. However, a grandfathering clause has been provided for investments made prior to 1st April, 2017, in respect of which capital gains would continue to be taxed in the country of which taxpayer is a resident. Provisions of new DTAA will enter into force and come into effect in India in respect of income derived in fiscal years beginning on or after 1st April, 2017.

14. **Notification No. 04 / 2017 dated 18th January, 2017**

    Notification of NCDEX Investor (Client) Protection Fund Trust set up by the National Commodity and Derivatives Exchange Ltd., Mumbai, as a commodity exchange, for the purposes of Section (23EC) of Section 10 of the Income Tax Act, 1961 for the assessment year 2013 – 2014 and subsequent assessment years.

15. **Notification No. 05 / 2017 dated 24th January, 2017**

    Notification of Punjab State Electricity Regulatory Commission constituted by the Government of Punjab in respect of exemption granted with regard to the specified income arising to the Commission for the purpose of Section 10 (46) of the Income Tax Act, 1961.

16. **Notification No. 06 / 2017 dated 24th January, 2017**

    Notification of Punjab Building & Other Construction Workers Welfare Board constituted by the Government of Punjab in respect of exemption granted with regard to the specified income arising to the Board for the purpose of Section 10 (46) of the Income Tax Act, 1961.

17. **Notification No. 07 / 2017 dated 31st January, 2017**

    Notification of approval accorded to M/s Centre of Innovative & Applied bio Processing (CIAB) for the purpose of clause (ii) of sub section (1) of Section 35 of the Income Tax Act, 1961 read with Rules 5C and 5D of the Income Tax Rules, 1962 from the Assessment Year 2016 – 2017 onwards in the category of Scientific Research Association with regard to allowance of deduction on account of Scientific Research Expenditure.

18. **Notification No. 08 / 2017 dated 31st January, 2017**

    Notification of approval accorded to M/s Christian Medical College Vellore Association, Vellore for the purpose of clause (ii) of sub section (1) of Section 35 of the Income Tax Act, 1961 read with Rules 5C and 5E of the Income Tax Rules, 1962 from the Assessment Year 2016 – 2017 onwards in the category of University, College or Other Institution

engaged in Research Activities with regard to allowance of deduction on account of Scientific Research Expenditure.

19. **Notification No. 09 / 2017 dated 9th February, 2017**

Notified that an applicant may apply for allotment of permanent account number/ tax deduction and collection account number through a common application form notified by the Central Government in the Official Gazette, and the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the classes of persons, forms and formats along with procedure for safe and secure transmission of such forms and formats in relation to furnishing of permanent account number/ tax deduction and collection account number.

20. **Notification No. 10 / 2017 dated 14th February, 2017**

The Notification seeks to amend Notification No. GSR 256(E), dated 26th June, 1996 and prescribe the Convention and Protocol between Republic of India and the State of Israel for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and capital, signed at Jerusalem, Israel on the 14th day of October, 2015. The protocol has been enforced on the 19th of December, 2016 following completion of procedures as required by respective laws for entry into force of the said Protocol.

21. **Notification No. 11 / 2017 dated 17th February, 2017**

Notification of approval accorded to M/s Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER), Puducherry for the purpose of clause (ii) of sub section (1) of Section 35 of the Income Tax Act, 1961 read with Rules 5C and 5E of the Income Tax Rules, 1962 from the Assessment Year 2016 – 2017 onwards in the category of University, College or Other Institution engaged in Research Activities with regard to allowance of deduction on account of Scientific Research Expenditure.

22. **Notification No. 12 / 2017 dated 21st February, 2017**

The notification seeks to amend Notification SO 576(E) No.137 dated 23rd May, 2003 wherein a general prohibition with regard to furnishing of information / documents by the Income tax Authority to any person or authority was imposed barring two exceptions. As a result of the non obstante clause appearing in sub section 2 of Section 138 under which the erstwhile notification had been issued, ambiguity arose in the interpretation prohibiting disclosure of information to authorities / persons as specified u/s 138(1)(a)(i) and 138(1)(b) of the Income tax Act, 1961. The partial amendment made in notification dated 23rd May, 2003 has now in effect removed the restraint placed and harmonised it with provisions of Section 138 of the Income Tax Act, 1961 so that information can now be shred with authorities / persons as specified u/s 138(1)(a)(i) and 138(1)(b) of the Income tax Act, 1961

23. **Notification No. 13 / 2017 dated 23rd February, 2017**

Notification of National Iranian Oil Company, as the foreign company and the Memorandum of Understanding entered between the Government of India in the Ministry of Petroleum and Natural Gas and the Central Bank of Iran on the 20th day of January, 2013 as modified by the minutes of meeting signed on the 16th August, 2016 between the Government of India, Ministry of Finance, Department of Economic Affairs and Bank Markazi Jomhouri Islami Iran, as the agreement subject to the condition that the said foreign company shall not engage in any activity in India, other than the receipt of income under the agreement aforesaid in respect of exemption granted with regard to the specified income arising to the Company the purpose of Section 10 (48) read with Section 295 of the Income Tax Act, 1961.

24. **Notification No. 14 / 2017 dated 23rd February, 2017**

Notification of Assam Electricity Regulatory Commission constituted by the Government of Assam in respect of exemption granted with regard to the specified income arising to the Commission for the purpose of Section 10 (46) of the Income Tax Act, 1961 subject to certain conditions.

25. **Notification No. 15 / 2017 dated 23rd February, 2017**

The Government of India vide its Notification No. number S.O. 350 (E), dated the 1st of April, 2002 had framed and notified a scheme for formation of an Industrial Park by virtue of the powers conferred to it by clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961. The Government has now notified the undertaking being developed, maintained and operated by M/s. Acendas IT Park (Chennai) Ltd. for the purpose of clause (iii) as outlined above subject to terms and conditions prescribed in the annexure accompanying the Notification.

GST for SME/MSMEs : A mixed bag

CA Bimal Jain

Whilst the Government is keen to make Goods and Services Tax ("GST") a reality soon, efforts put in by the Government to look into the voluminous suggestions submitted by various stakeholders, on First cut Model GST Law (put on public domain on June 14, 2016), is indeed commendable. Honest attempt of the Government to eradicate the daunting provisions in the earlier Model GST Law, can be very well seen in the Revised Model GST Law which was made public on November 26, 2016.

Apart from addressing key concerns of the Industry in a very decent manner, the Revised Model GST Law has also proposed an anti-profiteering mechanism to ensure benefit of lower taxes is shared with consumers, and also ensures no tax on securities and subsidies provided by the Government as also free of cost supplies.

This Article deciphers the impact of GST on Indian Small and Medium Enterprises ("SME") sector, considered as the backbone of the Country.

SME/MSM sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. The SME sector, consisting of approx. 36 million units and through more than 6,000 products contributes about 8% to GDP besides 45% to the total manufacturing output and 40% to the exports from the Country.

Flourishing amidst a challenging environment, the SME sector of India, has been caught in a state of flux, with the first-of-its-kind mammoth indirect tax reform namely, GST, standing just on the verge of its advent in India. Indeed, GST is going to be one of the most significant indirect tax reforms in the fiscal history of India to consolidate present multiple layers of indirect taxation. The implementation of GST will help to create a common national market by removing Inter-State barriers and reduce the cascading effect of taxes on the costing and pricing of goods and services.

GST will bring a bouquet of benefits for the Country as a whole, but, at the same time, it would also raise concerns for the SME & MSME sector considering the IT pro nature of this epic tax reform and the much talked about lower thresholds and minimal exemptions. Having said that there would be two sides of the coin for SM & MSMEs, following are the key areas/advantages of GST, for being cherished by SME & MSMEs :

?Multiplicity of taxes will go away in GST, bringing the ease of doing business in India to a great extent. With all the major 17 indirect taxes viz. Excise Duty, Service Tax, VAT, CST, Luxury tax, Entry Tax, etc., getting subsumed in GST, compliance requirements would certainly come down. Thus, the reluctance to get registration considering the State-wise varying provisions would fade away in GST.

- GST would eliminate time consuming border tax procedures and toll check posts. This will lead to reduction in logistic cost and encourage supply of goods across borders.
- Comparatively, there would be seamless flow of input tax credit throughout the supply chain subject to the periodical compliance by the supplier in filling of returns, payment of tax etc.
- GST will allow flexibility in transfer of goods across States. The cascading effect of VAT/Excise calculated on Excise & CST being Non-Cenvatable in present regime, would be eliminated. Thus, the MSMEs, who are facing brunt of Excise and CST burden on inter-state sales, owing to lack of infrastructure to open branches in different States, would be benefited in terms of cost saving, providing a much desired competitive edge.
- GST will help bringing transparency in the tax collection system and evading taxes would be tougher. This would help in creating level playing field for organized and unorganized sector by curbing the scope of various tax evasion practices.

However, on the flip side, the SME & MSME sector has to gear up for the following likely challenges under GST regime:

- Lower threshold limit seems to a major concern for SME & MSME sector, especially for the manufacturers. The threshold limits for registration under GST are INR 20 lakhs for States other than North Eastern States including Sikkim and INR 10 lakhs for North Eastern States including Sikkim. But, not to forget, the SME Manufacturers having turnover up to Rs. 1.5 crore and availing Excise

exemption, are subject VAT/CST, as the case may be, under the various State law.

- The proposed structure of composition scheme under GST, as per the Model GST Law, seems to be defying the very purpose of its giving relief to MSME/SME sector. The provisions are made so stringent so as to cover only a narrow base of taxpayers under its ambit. Further, supplier of services, inter-state outward supply of goods and reverse charge liabilities are specifically excluded for the compounding scheme. Furthermore, calculation of threshold limit for composition scheme is INR 50 lakhs, which shall be on the basis of aggregate turnover, including all sorts of supply i.e. taxable, exempt supplies, exports, etc., that will be calculated on PAN India basis.
- The SME & MSMEs would have to adapt and meet compliances through online mode in terms of registration and filing of returns, thus, initially, would be some teething problems and will enhance the compliance cost.
- Under the GST regime, inter-state stock transfer or self supplies will be subject to GST, this will impact the working capital requirement which will increase the interest cost and ultimately impact the pricing policies.
- Alignment of IT systems with new processes could be another area of challenges along with understanding nitty-gritties of GST Law.

Very aptly stated by Mr. N.R. Narayana Murthy that "every country has to recognize its competitive advantage and liberate its strengths to be a partner in trade and that's the only way you can survive and succeed". India is expected to emerge as one of the leading economies in the world over the next decade in the light of a positive political and economic scenario. The SME & MSME segment is expected to play a significant role in the emergence of the Indian economy, and has the potential to emerge as a backbone for this economy and act as an engine for growth, given the right set of support and enabling framework.

Undoubtedly, Positive and Negatives are part and parcel of every tax reform. But, considering the wide extended base of SME & MSMEs in the Country, finalisation of Model GST Law along with ensuring proper training to the sector would be crucial in time to come.

Impact of GST on Small and Medium Enterprises

CA Ashok Batra

Goods and Services Tax [GST] is expected to be implemented with effect from 01.07.2017. The impact of GST on Small and Medium Enterprises **[SME]** has been discussed below under the different headings for the purpose of ease of understanding:

1. Change in Rate of Tax

Rates of tax are expected to be higher in the GST Regime as compared to prevailing rates of tax. However, the aforesaid higher rates of tax will not have any impact in case of Business to Business [B2B] Transactions because of the availability of Input Tax Credit [ITC] to the recipient. However, wherever Business to Consumer [B2C] Transactions take place, the aforesaid higher rates of tax shall have an adverse impact on the consumer(s) because such taxes shall become a part of the total cost.

2. Increase in Requirement of Working Capital

Due to wider coverage and pruning of exemption list in GST, some of the goods and/services which are exempt under prevailing Indirect Taxes Regime, may become taxable under GST Regime. Further, as mentioned hereinabove, rates of taxes are expected to be higher in the GST Regime. In addition, due to substantial time lag between purchase of raw material and sale of final products [particularly seasonal products like Woolen Garments/Air-conditioners/Coolers etc.], the requirement of working capital is expected to be increased in GST Regime.

3. Increased Compliances

In terms of Section 34(1) of the Model CGST Act **['MGL'** in short] every registered taxable person other than an input service distributor or a non-resident taxable person or a person paying tax under Composition Levy Scheme shall be required to electronically file a return for every calendar month or part thereof. In addition, in accordance with Section 32(1) and 33(1) of the MGL the details of outward supplies as well as inward supplies are also required to be furnished. On the top of it, an Annual Return is required to be furnished in accordance with provisions of Section 39 of the MGL.

4. Reduced Logistic Costs

Due to availability of Input Tax Credit on Inter-State Transactions and Mechanised Entry Points [Chungis], the logistic costs are expected to be reduced in GST Regime. The aforesaid Reduced Logistics Costs shall benefit the recipient of concerned goods and services.

5. Seamless Credit

It is to be kept in mind that under the existing Indirect Taxes Regime, no cross credit between Value Added Tax [VAT]/Central Sales Tax [CST] and other Central Indirect Taxes is allowed. Furthermore, there are certain restrictions on inter-levy credits in between Central Excise and Service Tax. Therefore, with a view to overcome the aforesaid prohibitions and restrictions, there shall be availability of seamless credit throughout the supply chain under the GST Regime.

In the MGL, the components of input tax credit are the same as in the existing law namely "Input", "Input Service" and "Capital Goods". However, there is a major departure in the credit provisions pertaining to the all capital goods barring pipelines and telecommunication tower fixed to earth by foundation or structural support – credit for capital goods can be taken in one go like credit on inputs. Further, credit on capital goods need to be attributed to respective taxable and non-taxable or exempt output, and can be claimed only to the extent of the part attributable to the taxable output in the same manner as is done in case of inputs. Thus substantively, there shall be no difference in the credit pertaining to the capital goods and inputs. It is only for some small purposes like defining timeframe for reversal of credit on removal of goods to job worker or otherwise, for which the capital goods are treated differently from inputs. For such trivial purposes, the definition of capital goods given in Section 2(19) of the MGL appears to be too extensive. A major observation here is that the amount of tax credit pertaining to capital goods would get reduced in GST scenario in comparison to existing tax regime.

Further, a minute perusal of the definitions of the terms "Input" and "Input Service" given under

Section 2(52) and Section 2(53) of the MGL reveal in order to qualify as "Input" and "Input Service", it is essential that the supplier uses or intends to use them in the course or furtherance of business. On the contrary, in the existing regime the goods and services used in **relation to** manufacture or provision of service are allowed for credit.

6. No Credit without Payment by the Supplier

In terms of Section 16(2) of the MGL, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless the **tax charged in respect of such supply** has been actually paid to the account of the appropriate Government by the supplier either in cash or through utilization of input tax credit admissible in respect of the said supply. Thus, it becomes clear that unless the supplier has actually paid to the credit of the appropriate Government the tax charged by him, the recipient of goods and/or services can not avail the input tax credit.

Example

Mr. Ram provided Business Consultancy Services to XYZ Ltd. for stipulated consideration of Rs. 1,00,000/- + GST of Rs. 18,000/- [consisting of CGST of Rs. 9,000/- and SGST of Rs. 9,000] on 09.07.2017 in Delhi. XYZ Ltd... Shall not be able to avail credit of aforesaid GST Rs. 18,000/- until Mr. Ram has paid Rs**. 9,000/- each** to the credit of the Central Government and Delhi Government respectively.

7. No Interest on Wrong Payment of Tax

In terms of Section 19(1) of the Model Integrated Goods and Services Tax Act **[MIGST],** a taxable person who has paid IGST on a supply considered by him to be an inter-state supply, but which is subsequently found to be an intra-State supply, shall be granted **refund of the amount of IGST so paid** in the prescribed manner and subject to prescribed conditions.

Further, in terms of Section 19(2) of MIGST a taxable person who has paid CGST/SGST on a transaction considered by him to be an intra-State Supply, but which is subsequently found to be an inter-State supply, **shall not be required to pay any interest on the amount of IGST payable.**

8. Input Service Distributor Vs Self-supply

In GST Regime, self-supply of goods and services shall also become taxable. Consequently, the significance of concept of Input Service Distributor [ISD] shall be reduced.

9. Review of Existing Contracts

In terms of **Section 186of the Model CGST Act** [hereinafter abbreviated as **"MGL"]** the goods and/or services supplied on or after the appointed day [i.e. the day on which GST is implemented] in pursuance of a contract which has been entered prior to the appointed day **shall be liable to GST.** However, in the following **exceptional /specific situations, GST shall not be levied:**

(i) In terms of **Section 187 of the MGL** no tax shall be payable on the supply of goods and/or services made on or after the appointed day where the **consideration,** in full or in part**,** has been **received prior to the appointed day and the duty or tax payable thereon** has already been paid under the earlier law.

(ii) In terms of **Section 188 and Section 189 of the MGL** the tax in respect of the taxable services /taxable goods shall be payable **under the earlier law** to the extent the **point of taxation** in respect of such services/goods **arose before the appointed day.** However, where the portion of the supply of services/goods is not covered under the earlier law, such portion shall be liable to tax under GST.

10. Purchase Policy

Since input tax credit shall be available on both intra-state as well as inter-state purchases, the purchase policy of the business shall be based on economic considerations and not on tax considerations.

11. Anti-Profiteering Measure

In terms of **Section 163** of MGL, the Central government may by law constitute an authority to monitor the prices businesses charge for goods and services in the lead-up to, and following the introduction of, GST. If established, the authority will examine whether any reduction in a business' cost base, or in the tax rate on goods and services as a result of the introduction of GST, is passed on to consumers in the form of appropriately reduced prices.

12. Entitlement of VAT/ CENVAT Credit Carried Forward In a Return

In terms of Section 167 of the MGL, a registered taxable trader, other than a trader opting to pay tax under Composition Levy Scheme, shall be entitled to take **VAT Credit carried forward** in the return in respect of the period ending with the day immediately preceding the appointed day.

Example

A Registered taxable trader shall be entitled to take the VAT Credit carried forward in the return filed for the period ending 30.06.2017 if it is assumed that appointed day is 01.07.2017. Thus, if VAT Ceredit has not been carried forward in such return then the same shall not be allowed as input tax credit under GST.

Further, a registered trader shall not be allowed to take aforesaid credit unless amount admissible as Input Tax Credit under GST law.

Comments : Traders who are currently registered under VAT law and need to file return to comply with the current VAT laws needs to be very careful as trader will only be eligible to take the credit of the VAT carried forward in the return furnished under earlier law in respect of the period ending with the day immediately preceding the appointed day.

Manufacturer will clear his goods after the appointed day under GST law by charging CGST+SGST or IGST as per the situation which is available as input credit into the next step of supply chain. Goods cleared by manufacturer will be lower in price than the goods cleared by the trader in post GST scenario.

This will create difficulties for the trader to clear stock existed on the preceding day of the appointed day in post GST scenario. Hence **it is advised to the traders to have minimum stock of goods on the preceding day of the appointed day, so that impact of short-term difficulties arising post GST can be minimized.**

13. Postponement of Purchase of Capital Goods

The definition of term "capital goods" given vide Section 2(19) of the MGL is very wide and extensive. Further, barring the specified capital goods namely Pipelines and Telecommunication Tower, the entire amount of input tax in respect of capital goods can be claimed in the first year of receipt of capital goods. On the contrary, the definition of term "capital goods" under the prevailing CENVAT Credit Rules, 2004 is restrictive. Further, input tax credit is also allowed to be claimed in two instalments. Therefore, wherever it is feasible and convenient, the purchase of capital goods should be postponed until the commencement of the GST Regime so that prompt and in some cases more input tax credit can be availed.

14. Payment of GST on Advances

In terms of section 12 (Time of Supply of Goods) and Section 13 (Time of Supply of Services) of the MGL time of supply of goods or services shall be earlier of the following dates, namely:

(a) Date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply; **or**

(b) Receipt of payment.

Thus, in situations where the recipient of goods/ services makes an advance payment as per payment terms to the supplier, the tax is liable to be paid on such advance payment.

Section 16 (2)of the MGL provides, **amongst other things**, that a registered taxable person shall not be entitled to claim to claim Input Tax Credit until he has received the goods and/or services.

This contradicts with charging section 8 where levy is on supply. Suppose after Advance Payment supply does not happen for any reason like dispute, natural calamity etc., then what will happen to the GST already paid on advance payment ?

Still further, Levy of GST on advance payments will disproportionately increase the cost of compliance without any substantial benefit to revenue as tax on total payment has to be made once it is received. The GST would be levied on the supply and to keep track of advance received or invoices issued will create administrative / accounting hassles to the tax payers. Government will not earn any extra revenue by this measure except receiving some small part of revenue in advance; but it entails lot of extra documentation on the part of supplier. Even today the taxability of excise or VAT/CST is on either removal of goods or Invoicing to customer. Therefore, it is suggested that:

Only the date of receipt of payment (final consideration) would be taken into account and not the date of receipt of advance payment for GST, **or**

§ Input tax credit of tax paid on such advances received by the supplier should be available to the recipient without being the condition of Receipt of Goods/Services.

15. Benefit of a Composition Levy Scheme for small traders and manufacturers

A registered taxable **trader** whose **aggregate turnover** in the preceding ~~a~~ financial year **did not exceed Rs. 50,00,000** may be permitted to avail the benefit of Composition Levy Scheme. In terms of aforesaid scheme, a trader has to pay an amount calculated at a **fixed percentage of turnover**, in lieu of the tax payable by him. However, the amount to be paid under composition levy shall be as under:

(a) At least 2.5% of the turnover in a State during the year in case of a manufacturer; and

(b) At least 1% of the turnover in a State during the year in any other case.

However, following two prohibitions shall be imposed on a registered taxable trader or a manufacturer who opts for composition levy scheme:

(a) Prohibition on collecting any tax from the recipient on supplies made by him;

(b) Prohibition on availing credit of input tax.

Anti Profiteering under GST – a boon or bane?

CA Shivani Shah

With the Goods and Services Tax (GST) just round the corner, each one of us is waiting with baited breath for the new tax regime which by far will be the biggest ever indirect tax reform in independent India. But as they say, 'the devil lies in details'. Hence when one goes through the provisions of the revised model GST law which was released in November 2016, one cannot miss the clause 163 of the said law.

Clause 163 deals with the concept of Anti Profiteering and reads as under:

"(1) The Central Government may by law constitute an Authority, or entrust an existing Authority constituted under any law, to examine whether input tax credits availed by any registered taxable person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

(2) The Authority referred to in sub-section (1) shall exercise such functions and have such powers, including those for imposition of penalty, as may be prescribed in cases where it finds that the price being charged has not been reduced as aforesaid."

On a bare reading of the above provision, it appears to have been introduced with the objective that the benefits which would accrue on account of the implementation of the impending law, should reach to ultimate consumer. Hence the appropriate authority would get the carte blanche to achieve this objective. Its a given, that wherever GST has been implemented, there are inflationary trends in the market for the initial few years. The anti profiteering clause may to some extent act as a panacea to overcome the ills of inflation that may arise owing to the implantation of GST. Malaysia, which was one of the last countries to have adopted GST, has embraced the anti profiteering clause vide a separate legislation. However it led to widespread litigation and was found to be administratively difficult to implement.

But the million dollar question is whether this anti profiteering clause is at all necessary? One may argue that in a dynamic and competitive market like India, market forces will ensure that any reduction in business cost will flow to the end user. And exploiting consumers is not a good business strategy and this will be well understood by the players at large.

Assuming without admitting that the introduction of anti profiteering will benefit the country at large, there are a number of unanswered questions in respect to the same. The government will need to put in place scientific guidelines for the computation of benefit and administration. For instance, whether these costs will be considered at a product level or entity level? Whether costs include just the major costs or would it include all costs?

Further the clause 163 appears to be vague and lacking substance. Veterans may worry that this is really going back to the days of inspector raj and is highly retrograde in nature. It will once again give a free hand to the government to harass assesses' with their unscrupulous demands. In a free economy like India, government really does not need to monitor as both business and consumers are well placed to enjoy the benefits of GST.

However as a proactive measure, business should now pull their socks and do an impact analysis and work out strategies concentrating on areas which effect the pricing of their products, viz. Economic factors, seasonal and geographical conditions, input tax credit availability, documentation costing, compliance costs etc.

Anyway with the GST council having approved the contentious laws relating to CGST and IGST, the bills are likely to be tabled before the Parliament on 27th March 2017. It is widely hoped that the bills would sail through the Parliament as they are going to be money bills. So lets wait and watch as the final law rolls out!

Tax Deducted at Source (TDS) under the proposed GST Regime

CA Rishabh Kumar Barmecha

Section 46 of the revised model law on Goods and Service Tax (GST) contains provisions relating to TDS. The salient features TDS as enshrined in model law and draft rules are as follows:-

1. Section 46(1) empowers the Central Government or any State Government to require the following persons to deduct tax at the rate of one per cent from the payment made or credited to the supplier (deductee) of taxable goods and/or services

   a) a department or establishment of the Central or State Government

   b) Local authority

   c) Governmental agencies

   d) such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council

   Further tax has to deducted only when the value of the goods/services supplied under the contract exceeds Rupees five lakhs and the goods and or services have been notified by the appropriate Government on the recommendations of the Council. Tax is not required to be deducted on tax amount specified in the invoice.

2. The amount deducted as tax has to be paid to the appropriate government within ten days after the end of the month in which such deduction is made in the prescribed manner.

3. If any deductor fails to pay to the account of the appropriate Government the amount deducted as tax he shall be liable to pay interest in accordance with the provisions of sub-section (1) of section 45, in addition to the amount of tax deducted.

4. Determination of the amount in default under this section shall be made in the manner specified in section 66 or 67, as the case may be. Further section 69 empowers the proper officer to serve a show cause notice on the deductor, who after deducting tax fails deposit the amount with the appropriate government, and impose penalty for the default.

5. The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf.The draft rules on returns provides that TDS certificate will be made available to the deductee in FORM GSTR-7A through GST portal.

6. Where deductor fails to provide certificate to the deductee within five days of payment to the government he will be liable to pay a late fee of Rs 100 per day after the 5th day subject to a maximum of Rs 5,000.

7. The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 34, in the manner prescribed.

8. Refund to the deductor or the deductee, as the case may be, arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 48. Provided that no refund to deductor shall be granted if the amount deducted has been credited to the electronic cash ledger of the deductee.

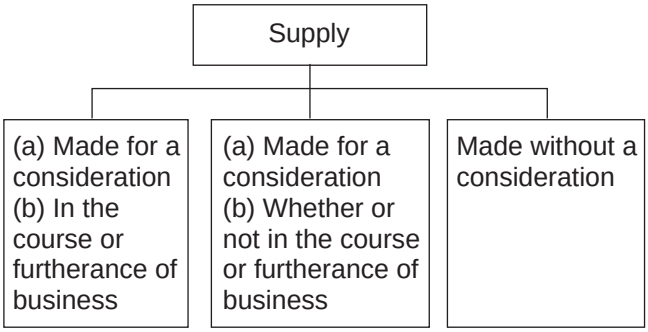
Concept of Supply Under GST

CA Shubham Khaitan

INTRODUCTION

Under GST law, the taxable event is 'Supply'. As per the Revised Model GST law, supply has an inclusive meaning. It illustrates the events which would be covered under supply. At the same time, it can be interpreted that there might be events which is not covered by the definition of supply but still will be considered as supply due to the inclusive nature of the definition.

But as per the meaning given, supply can be categorized into the following three parts;



1. Supply made for a consideration + In the course or furtherance of business

This includes

- all forms of supply of goods and/or services such as
- sale, transfer, barter, exchange, license, rental, lease or disposal
- made or agreed to be made for a consideration
- by a person in the course or furtherance of business.

Illustration 1: An electronics dealer sells a laptop for Rs. 50,000 to earn a profit

2. Supply made for a consideration + whether or not in the course or furtherance of business.

This includes

- Services imported
- For a consideration
- Whether or not in the course or furtherance of business

Therefore, if we have imported any service for which a consideration is payable then it will be a supply.

Illustration 2 : Interior designing services provided by a designer sitting in US to a person in India for which he charges $ 1,000.

It is important to note that, in this example, even if the person in India takes the designing services for his residence, it will be considered as a supply.

3. Supply made without a consideration.

This includes following transactions made or agreed to be made without a consideration;

i. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.

Illustration 3 : A Businessman disposes off his used computers. He had taken input tax credit on such computer at the time of purchase. This disposal will be treated as supply.

ii. Supply of goods or services between related persons, or between distinct personsas per Section 10 when made in the course or furtherance of business

Illustration 4 : Stock transfer by a company from its branch in Delhi to its branch in Kolkata

iii. Supply of goods from

a. Principal Agent (where agent undertakes to supply goods on behalf of the principal)

b. Agent Principal (where the agent undertakes to receive goods on behalf of the principal)

Illustration 5 : Goods sent by a clothes wholesaler in Kolkata to his agent in Bihar for sale to the retailers in Bihar will be treated as supply

iv. Importation of services -

- by a taxable person
- from a related person or from any of his other establishments outside India,
- in the course or furtherance of business.

Illustration 6 : A company in Kolkata receives

technical services from its head office in USA free of cost. This service will be treated as supply.

SUPPLY OF GOODS OR SUPPLY OF SERVICE

The law also provides for the matters which are to be specifically treated as supply of goods or supply of service.

Supply of Goods

The following transactions are to be specifically treated as supply of goods.

1. Transfer of title in goods

   Illustration 7 : Mr A, a plastic dealer sells plastic to Mr B for Rs. 15,000.

2. Transfer of title in goods by way of an agreement which states clearly that property in goods will pass at a future date, upon payment of full consideration as agreed, like Hire Purchase agreement.

   Illustration 8 : Mr A sells a refrigerator to Mr B costing Rs. 50,000 on hire purchase basis. Mr B pays Rs. 10,000 as down payment and he pays Rs. 2,000 per month for the next 30 months. The ownership and title is transferred to Mr B after full payment.

3. Transfer or disposal of the goods forming part of the assets of a business, by or under the directions of the person carrying on the business, so as no longer to form part of those assets, whether or not for a consideration.

   Illustration 9 : Mr A disposes off his old computer for Rs. 1,000

4. Where a person ceases to be a taxable person, any goods forming part of the assets of the business shall be deemed to be supplied by him for business purposes on the date immediately before he becomes non-taxable.

   Exception-

   (i) the business is transferred as a going concern to another person; or

   (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

   Illustration 10 : A sole proprietorship concern's turnover drops below the taxable limit and accordingly the proprietor deregisters himself. So, the assets remaining with him will be treated as a supply to his own self.

   However, if its turnover had dropped because he now enters into a partnership, then it will not be considered as a supply.

   Also, if he had handed over his business to his employee due to old age, then it will not be considered as supply either.

5. Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

   Illustration 11 : An unregistered club transfers tennis racquet to a member for Rs. 5,000

Supply of Services

1. Any transfer of goods or right in goods or undivided share in goods withoutthe transfer of title thereof.

   Illustration 12 : Mr. A gives machinery on hire to Mr. B for Rs. 5,000 per month

2. Any lease, tenancy, easement, licence to occupy land is a supply of services

   Illustration 13: Mr. A gives a land on lease to Mr. B for 30years for Rs.1,00,000 per month.

3. Any lease or letting out of the building including a commercial, industrial orresidential complex, either wholly or partly.

   Illustration 14: Mr. A rents a flat in Mumbai from Mr.B for his residential purposes for Rs. 20,000 per month

4. Any treatment or process which is being applied to another person's goods is a supply of service.

   Illustration 15:A Ltd, an automobile manufacturer sends its manufactured cars to B Ltd for testing. B Ltd here is providing services to A Ltd.

5. Use of business goods by any person for purposes other than that of the business by or under the direction of the person carrying on that business.

   Illustration 16 : Mr. Ram, a dealer of laptops, kept one of the laptops for his personal use for 15 days for his brother's wedding.

6. Renting of immovable property

   Illustration 17 : Mr. Anil gives a parking space on rent of Rs. 5,000 per month to Mr. Sunil.

7. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly.

   Exception: If the entire consideration has been received after the earlier of the following dates, namely

   a. Date of completion certificate by competent authority.

   b. Date of first occupation

   It shall not be treated as supply of service.

   Illustration 18 : Mr Raj, a promoter, sells a flat in his new building to Mr. Malhotra.

   Date of completion certificate – 11th March, 2018

   Date of first occupation – 16th March, 2018

   The entire consideration is received on 12th March, 2018 i.e. after the earlier of the following two dates

namely 11th, 16th i.e. 11th March. It will not be treated as supply in this situation.

If the consideration was received before 11th March, 2018, then it would have been treated as a supply

8. Temporary transfer or permitting the use or enjoyment of any intellectual property right.

   Illustration 19: Domino's Pizza allows the use of its patented process to Pizza Hut against consideration of Rs. 10 crore.

9. Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software

   Illustration 20 : A company pays programmers to develop an inhouse accounting software against payment of Rs. 2 lakhs.

10. Agreeing to the obligation to refrain from an act, or to tolerate an act or asituation, or to do an act.

    Illustration 21 : Mr. X, an employee of Z Ltd. agrees not to work in the same industry for at least 2 years by signing a non-compete agreement and against payment of Rs. 5 lakhs. This refers to refraining from an act.

11. Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

    Illustration 22: Asian Paints agrees to paint Mr. Asish's house for Rs. 3 lakhs. This will be treated as supply of service.

12. Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

    Illustration 23 : Mr. Rakesh, transfers the right to use a machine to Mr. Shyam in return for Rs. 5,000 per month

13. Supply, by way of or as part of any service or in any other manner whatsoever,

    - of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption),

    - where such supply or service is for cash, deferred payment or other valuable consideration.

    Illustration 24 : Blue Fox Restaurant provides food or drinks to customers at its restaurant.

POWERS VESTED WITH THE CG/SG

The Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods; or

© neither a supply of goods nor a supply of services.

COMPOSITE AND MIXED SUPPLY

"Composite supply" means a supply made

- by a taxable person to are cipient
- comprising two or more supplies of
- goods or services, or any combination thereof,
- which are naturally bundled and supplied in conjunction with each other in the ordinary course of business,
- one of which is a principal supply;

Illustration 25: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Taxability

A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. The rate will be that of the principal supply.

"**Mixed supply**" means

- two or more **individual supplies** of
- goods or services, or any combination thereof,
- made in conjunction with each other by a taxable person
- for a **single price**
- where such supply does not constitute a composite supply;

Illustration 26: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. So, it will be treated as a mixed supply.

Taxability

A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax. The entire supply will be taxable at that rate

CONCLUSION

In the times to come, the concept of supply will be one of the most pertinent areas of GST. A number of questions will be raised and will be one of the most litigation prone areas. So, it is of utmost importance to intricately evaluate each of the provisions under supply.

Service Tax – Recent Notifications, Circulars & Instructions

CA Ayush Vimal

1. **Notification 1/2017-Service Tax dated 12.01.2017**

   Amendment in Mega Exemption Notification for withdrawal of exemption to import of services of transportation of goods by a vessel from a foreign territory up to the customs station in India and rationalisation of exemption pertaining to services provided by a business facilitator or a business correspondent

   The Central Government has withdrawn the exemption in relation to services received from a person located in non-taxable territory in so far as it relates to the service of transportation of goods by a vessel from a place outside India up to the custom station of clearance in India with effect from 22nd January, 2017.

   The Central Government has also rationalised the exemption in relation to services provided by a business facilitator or a business correspondent to a banking company to stipulate that the said services will be exempted only if they pertain to accounts maintained in the rural area branch of the bank. Exemption in relation to services provided by a business facilitator or a business correspondent to an insurance company has been withdrawn.

2. **Notification 2/2017-Service Tax dated 12.01.2017**

   Amendment in Service Tax Rules, 1994to exclude certain persons from the definition of "aggregator" subject to specified conditions and stipulation of the person required to pay tax in case of service of transportation of goods by a vessel from a place outside India up to the customs station in India where the service is rendered by a non-resident person to another non-resident person

   The Central Government has excluded a person who enables a potential customer to connect with persons providing services of renting of commercial places meant for residential purposes from the definition of aggregator, subject to following conditions:

   - The service provider is registered under Service Tax and,
   - The service provider receives the whole of the consideration and no part thereof is received by the aggregator from the customer or his representative.

   The Central Government has specified that the person liable for paying tax in case of services provided by a person located innon-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station in India shall be the person in charge of the vessel or his agent appointed under Section 148 of the Customs Act, 1962.

3. **Notification 3/2017-Service Tax dated 12.01.2017**

   Amendment in Reverse Charge Provisions in respect of service of transportation of goods by a vessel from a place outside India up to a customs station in India rendered by a non-resident person to another non-resident person

   The Central Government has amended Notification 30/2012-ST dated 20th June, 2012 to put the liability of making service tax payment in respect of services provided by a person located innon-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station in India upon the person in charge of the vessel or his agent appointed under Section 148 of the Customs Act, 1962.

4. **Notification 4/2017-Service Tax dated 12.01.2017**

   Amendment in Abatement Notification to rationalize the abatement for tour operator services

   The Central Government has amended Notification 26/2012-ST dated 20th June, 2012 with effect from 22nd January, 2017 to prescribe a uniform rate of abatement of 40% in case of services rendered by a tour operator subject to the following conditions:

   - CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken.
   - The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

5. **Notification 5/2017-Service Tax dated 30.01.2017**

   Withdrawalof exemption for OIDAR services provided by a non-resident to an Indian entity

registered under Section 12AA of the Income Tax Act, 1961

The Central Government has amended Notification 25/2012-ST dated 20th June, 2012 to withdraw the exemption granted to persons located in non-taxable territory providing Online Information Database Access & Retrieval Services to entities registered under Section 12AA of the Income Tax Act, 1961.

6. Notification 6/2017-Service Tax dated 30.01.2017

Amendment of Service Tax Rules, 1994 to stipulate the date of payment of service tax in case of OIDAR Services provided by non-resident to a non-assessee online recipient

The Central Government has specified that the in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxableterritory and received by non-assesse online recipient, the service tax payable for the month of December, 2016 and January, 2017, shall be paid by 6th March, 2017.

7. Notification 7/2017-Service Tax dated 02.02.2017

Amendment in mega exemption notification to amend certain existing entries and insertion of new entries

The Central Government has amended Notification No. 25/2012-ST dated 20th June, 2012 to make the following changes therein:

- Exemption to services provided by the IIMs relating to the Post Graduate Programme in Management (Entry 9B) - Elimination of the condition that the program must be residential to avail the exemption.
- Entry 23A has been inserted to exempt services tax on consideration received from the Government in the form of Viability Gap Funding in relation to transport of passengers by air embarking from or terminating at a Regional Connectivity Scheme Airport (RCSA). The exemption will apply only up to a period of one year from the date of commencement of operations of RCSA.
- Entry 26D has been inserted to exempt life insurance services provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and AirForce, respectively, under the Group Insurance Schemes of the Central Government.
- Entry 30 has been amended to specify that any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption shall be exempted from service tax. The said entry corresponds to clause (f) of Section 66D of the Finance Act, 1994 (Negative List) which is proposed to be omitted by the Finance Bill, 2017. The definition of "process amounting to manufacture" has also been removed from Finance Act, 1994 and incorporated in the mega exemption notification. The amendment will be effective from the date the Finance Bill, 2017 receives the assent of the President.

All the aforesaid changes are effective from 2nd February, 2017 unless otherwise specified.

8. Notification 8/2017-Service Tax dated 20.02.2017

Service tax on services by the operators of Common Effluent Treatment Plant by way of treatment of effluent

The Central Government has directed that the operators of Common Effluent Treatment Plant shall not be required to pay Service Tax on the services of treatment of effluent for the period commencing from the 1st of July 2012 to 31st of March 2015.

9. Notification 9/2017-Service Tax dated 28.02.2017

Service tax on services by way of admission to a museum

The Central Government has directed that the service tax shall not be required to be paid on the services of admission to a museum for the period commencing from the 1st of July 2012 to 31st of March 2015.

10. Notification 10/2017-Service Tax dated 08.03.2017

Rationalisation of Exemption in relation to services provided to an educational institution

The Central Government has amended Entry 9 of Notification No. 25/2012-ST dated 20thJune, 2012 to restrict the application of exemption in relation to services provided to an educational institution to educational institutions providing services by way of pre-school education and education up to higher secondary school or equivalent. The restriction will be effective from 1st April, 2017.

11. Circular No 204/2/2017-Service Tax dated 16.02.2017

Clarification of applicability of service tax on the services by way of transportation of goods by a vessel from a place outside India to a customs station in India with respect to goods intended for transhipment to any country outside India

It has been clarified that since destination of goods imported into a customs station in India intended for transhipment to any country outside India is not a place in taxable territory in India, the services of transportation of such goods is not liable to service tax in India in accordance with Rule 10 of the Place of Provision of Services Rules, 2012 read with Section 66C of the Finance Act, 1994. However, the same will apply only if it is mentioned in the import manifest or the import report that the goods are transhipped in accordance with the provisions of the Customs Act, 1962 and rules made there under.

Ind AS Implementation – 5 Major Challenges

CA Vivek Agarwal

Financial reporting in India is passing through very remarkable moments owing to adoption of Indian accounting standards (Ind AS). For companies covered under Phase – 1 of mandatory Ind AS Financials, 31st March 2017 is first time complete reporting period and June 2016 was first Quarterly result publication date and we are months away from the second phase. Ind AS Implementation has very wide impact on the organization so companies should assess carefully impact on growth, strategies, joint ventures and tax planning. There are many challenges in implementation of Ind AS however this blog/ article focuses on 5 major challenges:

Challenges Ahead

Financial Instruments

Deferred Taxation

Revenue Recognition

Control for Group Accounting

Business Combination

Standard	Percentage of companies impacted
Financial instruments	83%
Income taxes	87%
Property, plant and equipment	27%
Share-based payments	22%
Business combination	15
Operating segments	38%

Source: Observation on Implementation of Ind AS by EY

Financial instrument (Ind AS 32, 109) : There are no mandatory standards applicable under Ind GAAP, Ind AS provide the detailed guidance on accounting of classification, measurement, derecognition and impairment of financial assets and financial liabilities. The financial asset is classified based on entity's business model for managing financial asset and contractual cash flow characteristics of the financial asset. Under an Indian GAAP, the classification of financial liability or equity is largely governed by legal form of the instrument and under Ind AS 32 the same is based on substance of the contractual agreement rather than its legal form. This may create the major changes in net worth as well as net income due to reclassification.

Key Differences:

- Classification of liability and equity in case of compound financial instruments like convertible bonds, redeemable preference shares, compulsory convertible debentures etc.
- Re-classification of dividend and interest in profit & loss account due to reclassification of liability and equity.
- Expected loss model for Impairment of financial assets
- All derivative instrument to be carried at fair value, unless hedge accounting requirements met
- Investments to be categorized – Fair value through profit or loss, Fair value through other comprehensive income and amortized cost

Impact :

Accounting Standards (AS) – 30, 31 and 32 were issued but not notified as there are constant changes in the accounting of financial instruments in International GAAP. ICAI has recently issued Guidance note on Accounting for derivatives applicable for accounting period commencing after 1st April 2016 for Non-Ind AS entities. However, there is a significant diversity in the practice. The implementation of Ind AS 32, 109, disclosure requirements of Ind AS 107 and applying fair value measurement of Ind AS 113 would be the most challenging during Ind AS Implementation. As per various reports published after reviewing June 2016 results, it is observed that Standards relating to Financial Instruments are the most challenging standards.

Control /Consolidation (Ind AS 110) :

Under prevailing accounting standard control is assessed on the basis of more than one-half of the voting power or control on the composition of board however as Ind AS is principle based standard, it explains the control in detail and Ind AS 110 provides a single control model.

As per Ind AS 110, "*An investor controls an investee if and only if the investor has all the following:*

(a) power over the investee;

(b) exposure, or rights, to variable returns from its involvement with the investee; and

(c) the ability to use its power over the investee to affect the amount of the investor's returns"

The determination of who controls whom is the critical when we move from existing Indian GAAP to Ind AS. The universe of entities that get consolidated could potentially different under both the frame works. The application of control definition would change the line items of Consolidated financials in Ind AS.

Key Differences:

- Consolidation based on new definition of control
  - Veto right with minority share holders
  - Potential voting rights
  - Structured entities
  - De facto control
- Deferred tax on undistributed reserve
- Deferred tax on intercompany elimations
- Mandatory use of uniform accounting policy

Impact:-

With the introduction of new definition several entities that are not currently consolidated may get included and vice-versa and it will be a challenge for Corporate India and professionals.

Revenue recognition (Ind AS 115) : (Deferred till 2018-19)

Ind AS 115, Revenue recognition from contract with customers, introduce a single revenue recognition model, which applied to all type of contracts with customers, including sale of goods, sale of services, construction arrangements, royalty agreements, licensing agreements etc. In contrast under existing Indian GAAP, there is separate guidance that applies to each of these type of contracts. Ind AS brings five-step model which determines when and how much revenue is to be recognized.

Key Differences:

- 5 step revenue recognition model
- Timing of recognition of revenue (Right of return, dispatch Vs. delivery) based on satisfaction of performance obligation
- Detailed Guidance on
- Incentive schemes
- Service concession arrangements
- Customer loyalty programs
- Time value of money to be considered
- Separation of contracts in case of linked transactions

Impact :-

India has deferred to implement this standard in as it has not been implemented internationally. NACAS had recommended to defer the application of Ind AS 115 and Ministry of Corporate Affairs announcedthe same on March 2016. Ind AS 18 and 11 has been notified in line with IAS 11 and IAS 18.

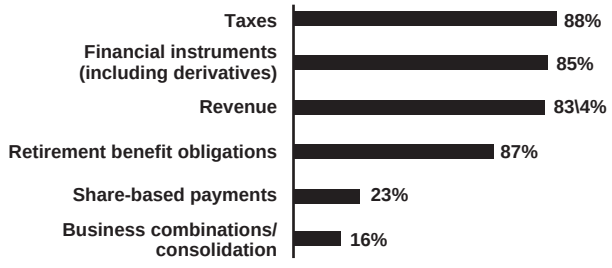
Business combinations (Ind AS 103):

Currently there are no comprehensive standard which wholly addressing accounting for business combination, currently it is done by form of transaction like Merger, Acquisition etc. Under Ind AS 103, all business combinations are accounted for using the purchase method that considers the acquisition date fair values of all assets, liabilities and contingent liabilities.

Key Differences:

- Acquisition date is the date when control is transferred – not just a date mandated by court or agreement
- Mandatory use of purchase method of accounting and fair value
- Post-acquisition amortization of asset based on the acquisition date fair values
- Transaction cost charged to the profit and loss account
- Goodwill to be tested at least annually for impairment
- Common control transactions are accounted using pooling of interest method

Accounting areas having a significant impact (% of companies impacted)



Source : Ind AS Impact Analysis by Ind As

Impact:-

With the adoption of new requirements on business combinations, it will result into consistency over the period. Companies which are in progress of negotiation

regarding acquisition, need to pay kind attention to the requirement of the standard. Fair valuation of asset on the date of acquisition and resultant goodwill are major areas to look after under new Ind AS.

Deferred taxes (Ind AS 12) :

As per Indian GAAP deferred taxes are recognized on timing difference between accounting income and taxable income for the year and it is known as income statement approach whereas under Ind AS, deferred taxes are recognized for future tax consequences of temporary differences between carrying value of assets and liabilities in their books and their respective tax base and known as balance sheet approach.

Key Differences:

- Ind AS is based on balance sheet approach whereas AS 22 is based on income statement approach
- Disclosure requirements are more detailed in Ind AS compare to AS
- Deferred tax on revaluation, undistributed profit by subsidiaries/associates, intercompany elimination
- The concept of virtual certainty does not exist in Ind AS 12

Impact:

Whole method of calculation of deferred tax provision has changed so we have to carefully assess the impact on the financial statement. On transition to Ind AS, the deferred tax on reconciliation with Ind AS, deferred tax on components of Other Comprehensive Income (OCI) and during consolidation will be challenging during implementation.

The above mentioned are some of the major challenges in implementation of Ind AS. The other areas of challenges are application of Ind AS 101 First time adoption, determination of functional currency under Ind AS 21, preparation of Statement of Changes in Equity and accounting of components of Other Comprehensive Income. Corporate India and professionals have to be cautious while dealing with transformation process to ensure smooth and effective convergence.

Infrastructure Sector — Way More to go

CA Vijay Laxmi Agarwal

Infrastructure sector

Infrastructure sectors plays a pivotal role in the Indian economy in pushing it in the upward direction. The total allocation for infrastructure sector in the last budget was Rs. 2,21,246 crore.

The Government had made efforts to revive and give boost to Public Private Partnerships (PPPs) by way of introducing the Public Utility (Resolution of Disputes) Bill in the last budget which provided for resolution of disputes in PPP projects in a speedier and time bound manner.

The Government has started putting in efforts towards the direction of giving a boost to the infrastructure sector by way of approving hybrid PPPs for the road sector, introduction of the new Merchant Shipping Bill and revamping the Tariff Authority for Major Ports (TAMP).

Market performance

According to the Economic Survey 2016-17[1]as per the first advance estimates of the CSO, growth rate of the industrial sector comprising mining & quarrying, manufacturing, electricity and construction is projected to decline from 7.4 percent in 2015-16 to 5.2 percent in 2016-17. During April-November 2016-17, a modest growth of 0.4 percent has been observed in the Index of Industrial Production (IIP) which is a volume index with base year of 2004-05. This was the combined effect of a strong growth in electricity generation and moderation in mining and manufacturing

IIP Based Growth Rates of Broad Sectors/Use-based Classification (per cent)

	2014-15	2015-16	April-Nov 2015-16	April-Nov 2016-17
General Index	2.8	2.4	3.8	0.4
Mining	1.5	2.2	2.1	0.3
Manufacturing	2.3	2.0	3.9	(0.3)
Electricity	8.4	5.7	4.6	5.0
Basic goods	7.0	3.6	3.9	4.1
Capital Goods	6.4	(2.9)	4.7	(18.9)
Intermediate goods	1.7	2.5	2.0	3.4
Consumer goods	(3.4)	3.0	4.1	1.8
Durables	(12.6)	11.3	11.8	6.9
Non-durables	2.8	(1.8)	(0.5)	(1.8)

Source: CSO

If the growth is analysed on the basis of usage, basic goods, intermediate goods and consumer durable goods attained moderate growth. Conversely, the production of capital Goods declined steeply and consumer non-durable goods sectors suffered a modest contraction during April-November 2016-17.

On an analysis of the progress made by eight core infrastructure supportive industries, viz coal, crude oil, natural gas, refinery products, fertilizers, steel, cement and electricity, which comprises a total weight of 38% in the IIP, they have registered a growth rate of 4.9% during April-November, 2016-17 as compared to 2.5% during April-November 2015-16. On one side, there was a substantial increase in the production of refinery products, fertilizers, steel, electricity, and cement while the production of crude oil and natural gas fell during April-November, 2016-17. A lower growth in the production of coal was attained during the same period.

H1 2016-17 has been positive for the infrastructure related activities with most of its indicators showing expansion during the said period. In power sector, while thermal power showed a growth of 6.9 per cent, hydro and nuclear power generation contracted marginally during the said period.

Foreign direct investment (FDI) policy has been simplified and liberalized by the government in the following sectors –

- Defence
- Railway Infrastructure
- Construction
- Pharmaceuticals, etc.

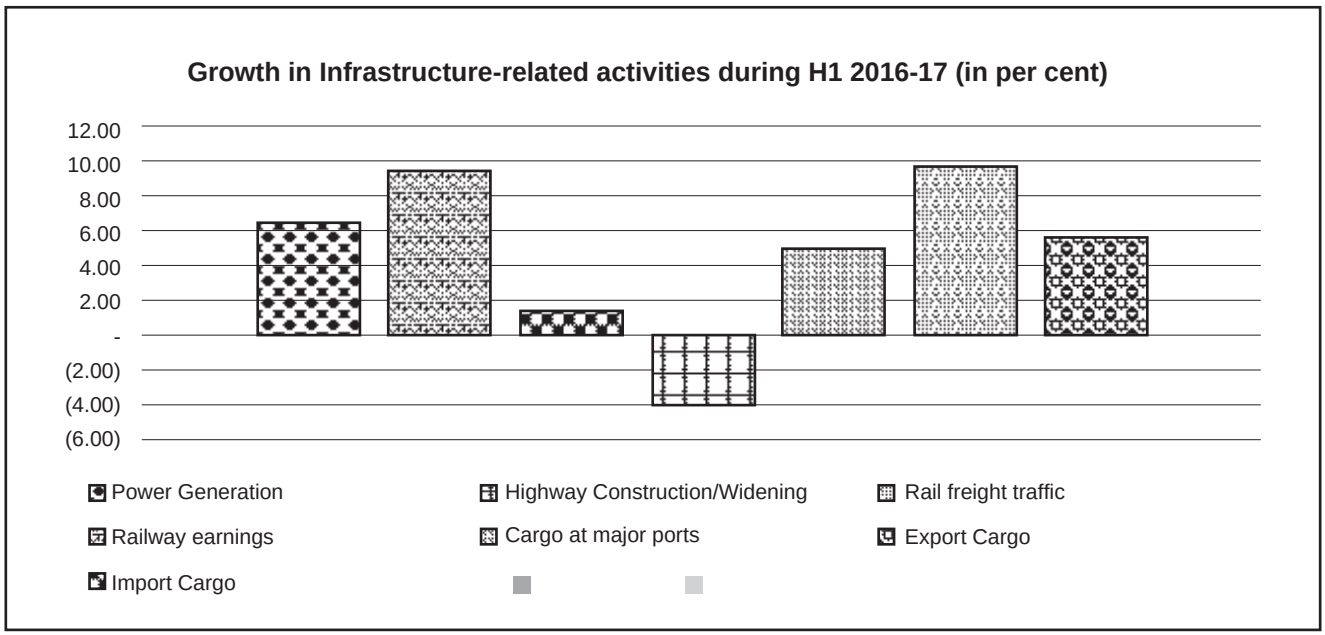
As a result of the liberalized approach by the Government, there has been a 30.70 per cent surge in FDI equity inflows, the same increasing from US$ 16.60 billion during April-September 2015-16 to US$ 21.70 billion during April-September 2016-17.

In order to facilitate investment and ease of doing business in the country, many new initiatives has been taken up by the Government, out of which few have been listed as under: -

- Make-in-India
- Invest India
- Start Up India
- E-biz Mission Mode Project

- Online application for industrial license
- Industrial entrepreneur memorandum
- Simplification of application forms for Industrial Licence and Industrial Entrepreneur Memorandum
- Limiting documents required for export and import to three by Directorate General of Foreign Trade (DGFT)
- Setting up of Investor Facilitation Cell under Invest India to Guide
- Assistance and handholding to investors during the entire life-cycle of business

Growth in infrastructure related activities during H1 2016-17 has been depicted with the help of the following chart –



Awards from budget 2017-18

- A Budget allocation of Rs.2,41,387 crores has been made in 2017-18 for transportation sector as a whole, including rail, roads, shipping etc.
- For the railways for the year 2017-18, the total capital and development expenditure has been pegged at Rs.1,31,000 crores which includes Rs.55,000 crores provided by the Government.
- For passenger safety, a Rashtriya Rail Sanraksha Kosh will be created with a corpus of Rs.1 lac crores over a period of 5 years.
- To facilitate greater private participation and investment in construction and operation, new Metro Rail Act will be enacted by rationalising the existing laws.
- A new Metro Rail Policy will be announced with focus on innovative models of implementation and financing, as well as standardisation and indigenisation of hardware and software.
- There is a proposal to feed about 7,000 stations with solar power in the medium term.
- The budget allocation for highways increased from Rs.57,976 crores in BE 2016-17 to Rs. 64,900 crores in 2017-18.
- It was proposed to set up strategic crude oil reserves at 2 more locations, viz. Chandikhole in Odisha and Bikaner in Rajasthan. This will take our strategic reserve capacity to 15.33 MMT
- Select airports in Tier 2 cities will be taken up for operation and maintenance in the PPP mode.
- Second phase of Solar Park development with an additional 20000 MW capacity to be taken up.
- A provision of Rs.745 crores in 2017-18 made in incentive schemes like M-SIPS and EDF for creating an eco-system to make India a global hub for electronics manufacturing
- A new and restructured Central scheme with a focus on export infrastructure, viz. Trade Infrastructure for Export Scheme (TIES) will be launched in 2017-18.

(Footnotes)

1 http://indiabudget.nic.in/es2016-17/echapter.pdf

A Mixed Bag of Emotions for the Corporate Bond Market

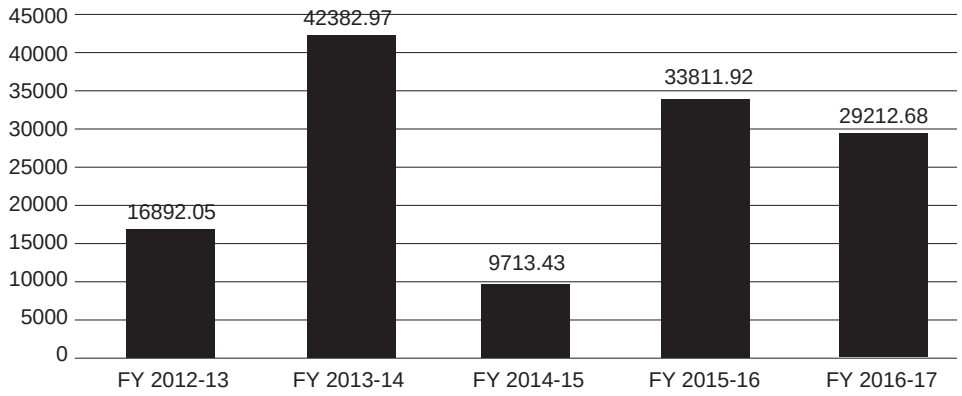
CS Abhirup Ghosh & Shoaib Qurashi

Introduction

The bond market in India has been in a topsy-turvy situation. Giving a smooth start at the beginning of FY 2016-2017 and eventually ending up in a rough situation owing to the demonetisation of high value currency and Donald Trump's election, the market has seen it all in the past ten months. However, at the end of three quarters of FY 2016-2017, the market has seen public issuances of bonds worth Rs.29,212 crores and in all likelihood, the overall performance of the entire year might go past the previous year's overall volume of Rs.33,811 crores. The chart below shows the volume of issuances in the past few years :

Bond issuances in India

In INR Crores



Source: SEBI

Though the Indian bond market has been able to report respectable volumes, but it is believed that the market has not been able to live upto its potential and one of the major reasons because the reliance placed on bank financing is much more than the reliance placed on bond financing. One has to also note here that banks have limited sources of funds. Therefore, it is always better to have an alternative source of funding and here financing through bond may come handy.

Therefore, there is a need for a vibrant enabling environment that would allow the corporates to explore bond markets more often than now and make use of the economies of bond financing.

Key challenges in the Indian Corporate Bond Market

Retail investors have always been risk averse and has mostly preferred to stay away from the bond and debt market. In addition to the above, there are several other issues which keep the retail investors out of the market, and thereby losing a huge investor base. The same have been discussed below:

1. **Non Awareness :** Retail investors are generally unaware of the developments happening in the bond market and as such they need to be educated about the instruments and the risks associated with it.
2. **Government debt preference :** The huge supply of Government Papers in the country is one of the major impediments to the growth of the corporate bond market. To meet the target of the fiscal deficit, every year Government issues bonds in huge quantity which ultimately impede the growth of corporate bond market.

3. **TDS and Stamp Duty Issues :** TDS is deductible under Income Tax Act, 1961 (I.T. Act) on the interest component of bonds and hence it act as a deterrent for the bond market development. Stamp Duty acts as a significant source of revenue for the Government and hence it heavily impacts the cost of bond issuance.
4. **Infrastructure :** Corporate Bond Market in India isn't as developed as in various other countries. Due to lack of infrastructure spending, bond market hasn't been able to develop in India. Enhancement of screen based automated order matching, central clearing and settlement, negotiated dealing system, etc. could act as impediment for the growth.
5. **Ratings :** Bond ratings also deter the growth of the bond market as most of the corporates to garner "A" ratings and as such retail investors avoid subscribing it.
6. **Lack of market makers :** The growth and development of any market is dependent on market makers who can provide both buy and sell quotes. Although prevalent in the Government Bond Market, they are lacking in the corporate bond segment.

What were the expectations from the Budget 2017?

The market expected a number of reforms to be passed through during the year so as to enable a facilitating environment for bond financing and they are:

1. Relaxing tax and stamp duty norms to make the sector more attractive;
2. Relaxation of investment conditions for pension, provident and insurance funds to enable the participation of long term investors in the corporate bond market;
3. Allow more partial credit enhancements for the bonds thus boosting corporates to access bond market;
4. Measures to make the corporate bond market attractive for the foreign investors;
5. Commercial Banks to allow NBFCs to issue rupee-denominated bonds overseas for their capital requirements and expansion of projects.

What came out of the Budget?

While most of the expected changes have not been able to find a place in the FM's budget, but still there were few things to offer to the corporate bond market, but mostly by way of direct tax benefits, and they are:

1. The benefit of concessional withholding tax of 5% under section 194LC to be charged on interest earned by the foreign entities in ECBs and bonds has been extended till 30th June, 2020. Also TDS shall be deducted @ 5% on interest component of rupee denominated masala bonds effective retrospectively from assessment year 2016-2017 and subsequent years.
2. Section 54EC of the I.T. Act shall be amended so as to provide exemption to investment made in any bond redeemable after three years which has been notified by the Central Government. This shall be applicable from 1st April, 2018.
3. The benefit of concessional tax rate of five percent under section 194LD has been extended till 30th June, 2016.
4. Transfer of rupee denominated bonds from non-resident to non-resident issued outside India shall not be regarded as transfer under section 47 of the I.T Act. The said amendment shall take effect from 1st April, 2018.

If one had to conclude, this Budget is a mix of ups and downs for the Indian bond market.

FROM THE DESK OF GENERAL SECRETARY - ACTIVITIES SINCE 01.01.2017

SL. No.	Date	Name of Programme	Speaker
1.	05.01.2017	DTPA Group Discussion meeting on "Insolvency & Bankruptcy Code" at DTPA Conference Room	Adv Deepak Jain
2.	10.01.2017	DTPA Group Discussion meeting on "Benami Property Transaction Act 1988 as amended by Benami Transaction (Prohibition) Amendment Act 2016 at DTPA Conference Room	CA Anand Kr. Tibrewal
3.	11.01.2017	DTPA S. C. Meeting on "IFRS(introduction As To Ind As, Presentation 0f Financial Statements Under Ind As And Accounting Of Property, Plant and Equipment)" at DTPA Conference Room	CA Vivek Agarwal
4.	14.01.2017 to 15.01.2017	Residential Seminar at Puri	CA P. K. Himmatsinghka
5.	18.01.2017	DTPA S. C. Meeting on "IFRS(Income Tax as per Ind as 12 and First Time Adoption as per Ind As 101) at DTPA Conference Room	CA Subodh Agarwal
6.	19.01.2017	DTPA Group Discussion meeting on " Summons/Notices post Demonetitization & IDS-2(PMGKY) 2016 at DTPA Conference Room	Adv Paras Kochar
7.	24.01.2017 to 25.01.2017	DTPA 2 days Workshop on" Crash Course on Limited Insolvency Examination with Special Focus on (Insolvency & Bankruptcy Code) at DTPA Conference Room	CA Sumit Binani
8.	27.01.2017	DTPA Group Discussion meeting on " Transitional Provisions under Model GST Law" at DTPA Conference Room	CA P. D. Rungta
9.	01.02.2017	DTPA S. C. Meeting on "Live Telecast and Discussion on Union Budget/ Finance Bill - 2017" at DTPA Conference Room	Adv. Subash Chandra Agarwal CA Arun Kr. Agarwal
10.	03.02.2017	DTPA & ACAE jointly "Budget Seminar" at Kalamandir	Sr. Adv. Mr. N. K. Poddar Prof. Suman Mukherjee, Economist CA Bhupendra Shah, Mumbai CA Arun Agarwal
11.	09.02.2017	DTPA Group Discussion Meeting on "Budget 2017-Direct Tax Proposals" at DTPA Conference Room	CA P. K. Himmatsinghka
12.	13.02.2017	DTPA S. C. Meeting on "Critical Analysis of Important Proposals In Union Budget 2017 & Cash Transactions Post Demonetization -Investigation Through Response Forms" at DTPA Conference Room	CA S. S. Gupta Adv Paras Kochar
13.	17.02.2017	DTPA Group Discussion Meeting on "Place of Provision of Supply - GST" at DTPA Conference Room	CA Anshuma Rustagi
14.	24.02.2017	DTPA Group Discussion Meeting on "Insolvency & Bankruptcy Code Overview and Opportunities" Room	CA Kamal Nayan Jain
15.	07.03.2017	DTPA S. C. Meeting on "Post Demonetization Deposits with Reference to Notices, Survey & Investigations Vis-a-vis Pmgky Scheme - 2016" at DTPA Conference Room	Shri K. L. Maheshwari CA S. S. Gupta Adv Paras Kochar
16.	10.03.2017	DTPA Group Discussion Meeting on "ICDS(I, III, IV, VII & X)"Cares to be taken for computation at DTPA Conference Room	CA Sanjay Bhattacharya
17.	11.03.2017	DTPA Full Day Seminar on " Digital Trends Empowering Professionals In Digital ERA" at Park Hotel	Mr. Khalid Anwar Mr. Prakash Kumar Mr. Rupesh Kr. Singh Mr. Ravindra Banthia Mr. Sandeep Bajaj Mr. Pranay Kochar
18.	16.03.2017	DTPA Group Discussion Meeting on "ICDS(V, VI & IX)"Cares to be taken for computation at DTPA Conference Room	CA Roshan Kr. Bajaj
19.	20.03.2017	DTPA S. C. Meeting on Bank Audit(Practical Approach to Bank Audit & Audit in CBS Environment) at DTPA Conference Room	CA Neena Maheshwari CA Sonu Jain CA Nitesh More
20.	22.03.2017	DTPA Group Discussion Meeting on "ICDS(II, VIII)"Cares to be taken for computation at DTPA Conference Room	CA Ashish Rustagi
21.	24.03.2017	DTPA Group Discussion Meeting on "GST Value of Supply"Cares to be taken for computation at DTPA Conference Room	CA Subham Khetan

SL. No.	Date	Name of Programme
DTPA Other Programmes		
1.	07.01.2017	Inter CA Study Circle Indoor Cricket Tournament at Space Circle Club, VIP Road, Kolkata
2.	08.01.2017	DTPA & IRS Association jointly Friendly Cricket Match at Sambaran Banerjee Cricket Academy Ground, Vivekanand Park, Southern Avenue, Kolkata
3.	24.01.2017	DTPA Ghazal Nite cum Dinner with all Pr. CITs at Shisha Reincarnated, Block - D,6th Floor, 22, Camac Street, Kolkata
4.	26.01.2017	Participation in Flag Hosting at EIRC Premises
5.	26.01.2017	Swatch Bharat Abhiyan at DTPA office
6.	31.01.2017	Felicitation to ITAT Member Hon'ble Shri Sudhakar Reddy & T. K. Verky at Callcutta Club
7.	15.02.2017	DTPA 3rd Executive Committee Meeting at DTPA, Conference Room
8.	23.02.2017	Participation at Vidya Mandir for collecting Highly Commendable Performance Award from EIRC-ICAI
9.	24.02.2017	Felicitation of new elected chairman of EIRC, CA Manish Goyal
10.	11.03.2017	Holi Programme, held jointly with EIRC, ICAI at Vidya Mandir
11.	26.03.2017	DTPA facilitated Hon'ble President ITAT Shri G. D. Agarwal and Hon'ble Law Secretary Shri Suresh Chandra
12.	27.03.2017	DTPA attended the inauguration of E Court at ITAT, inauguration done by Shri Suresh Chandra, Hon'ble Law Secretary

LIST OF NEW LIFE MEMBERS ADMITTED SINCE 01.01.2017

Sl. No.	NAME	PROPOSED BY	QUALIFICATION	E. MAIL ID
1	CA Dipika Saraf	CA Binay Kr. Singhania	ACA	saraf.dips@gmail.com
2	CA Jyoti Ranjan Mohanty	CA Binay Kr. Singhania	ACA	zeetumohanty@gmail.com
3	CA Roshan Kr. Singh	CA Barkha Agarwal	ACA, CS, B.Com(H)	roshansingh@icai.org
4	CA Kaushal Agarwal	CA Sanjay Kr. Kejriwal	B.Com(H), ACA	ka@agarwalkco.in
5	CA Gourav Gupta	CA Sanjay Kr. Kejriwal	B.Com(H), FCA	gg@agarwalkco.in
6	CA Ashish Kr. Goenka	Shri Rajneesh Kumar	B.Com(H), FCA, DISA	cagoenka@yahoo.in
7	CA Sunil Kr. Baid	CA Ramesh Kr. Chokhani	ACA	casunilbaid@gmail.com

Full Day "IT Conference“
on 11th March 2017
at Park Hotel
DIGITAL TRENDS EMPOWERING PROFESSIONALS IN DIGITAL ERA

ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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