Grant Thornton

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Union Budget 2015-16

Impact on the BFSI sector

– A detailed analysis

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Contents

Introduction

This impact analysis summarises some of the key policy announcements made by the Hon'ble Finance Minister, Mr. Arun Jaitley, during his Union Budget 2015-16 speech on 28 February 2015. The tax proposals contained in the Finance Bill, which are relevant to the BFSI sector, are analysed in the subsequent pages of this document.

The Finance Bill will be discussed in the Parliament before it is enacted and is subject to any amendments that may be made pursuant to the discussions.

The direct tax proposals, discussed herein, are effective from the financial year commencing on 1 April 2015, unless otherwise specified.

The indirect tax proposals, discussed herein, are effective from the date when the Finance Bill is enacted through the Presidential assent.

However, any change in indirect tax rates will generally be made applicable from 1 March 2015, unless otherwise specified.

There are some significant tax and regulatory changes, which are proposed in this Finance Bill. The direct tax amendments proposed in this Budget include providing tax pass-through status to Category I and Category II Alternative Investment Funds (AIFs), clarification on tax regime of Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (Invits), together with the decision to not pursue the Direct Tax Code (DTC) and defer the General Anti-Avoidance Rules (GAAR). Some of the changes proposed by the Finance Minister have brought immense relief for the BFSI sector.

Key policy initiatives

The Finance Minister has announced significant policy initiatives in his budget speech. These policy pronouncements are expected to be implemented through legislative announcements in the subsequent months. Some of the key policy initiatives have been summarised below:

Financial sector

- It is proposed to set up a Public Debt Management Agency (PDMA), which will bring both external and domestic borrowings under one roof
- It is proposed to amend the Constitution of India by inserting the enabling provisions to amend the Government Securities Act and the Reserve Bank of India (RBI) Act
- The Forward Markets commission is proposed to be merged with the Securities and Exchange Board of India (SEBI)
- Section 6 of Foreign Exchange Management Act (FEMA) is proposed to be amended to provide control to the Central government, which would specify regulations in respect of capital account transactions, in consultation with the RBI
- It is proposed to create a Task Force which will establish a sector-neutral financial redressal agency to address grievance against all financial services providers'
- The India Financial Code will be introduced shortly for consideration in the Parliament
- It is proposed to allow an option to the employee to opt for Employee Provident Fund or New Pension Scheme
- Gold monetisation scheme to allow depositors of gold to earn interest in their metal accounts and jewellers to obtain loans in their metal account to be introduced; Sovereign Gold Bond, as an alternative to purchasing metal gold scheme to be developed
- An autonomous Bank Board Bureau to be set up to improve the governance of public sector banks
- A new and more comprehensive Benami Transactions (Prohibition) Bill will be introduced, which will enable confiscation of benami property and provide for prosecution. This will block a major avenue for generation and holding of black money in the form of benami property, especially in the real estate sector

Banking

- Micro Units Development Refinance Agency (MUDRA) Bank to be created with a corpus of Rs 20,000 crores and credit guarantee corpus of Rs 3,000 crore
- MUDRA Bank will be responsible for refinancing all micro-finance institutions, which are in the business of lending to such small business entities through the Pradhan Mantri Mudra Yojana
- A Trade Receivables Discounting System (TReDS), which will be electronic platform for facilitating financing of trade receivables of MSMEs, to be established
- Comprehensive Bankruptcy Code of global standards to be brought in during the fiscal 2015-16 to improve the ease of doing business in India

Key policy initiatives

- Postal network with 1,54,000 points of presence, spread across villages, to be used for increasing access of the people to the formal financial system

Non Banking Financial Companies (NBFCs)

- NBFCs that are registered with the RBI and have asset size of Rs 500 crore and above may be considered for notifications as 'Financial Institution' in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002)

Foreign investment

- Foreign investment in AIFs to be allowed
- Distinction between different types of foreign investments, especially between foreign portfolio investments and foreign direct investments to be done away with and replaced with composite cap

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- The tax rates and the education cess remain unchanged for domestic and foreign companies
- Surcharge for domestic companies increased by 2% as below:
  - Surcharge @ 7% (if the taxable income > Rs 1 crore but < Rs 10 crore)
  - Surcharge @ 12% (if the taxable income > Rs 10 crore)
- Surcharge for foreign companies remain unchanged
- Surcharge for non-corporate entities increased by 2% for income exceeding Rs. 1 crore
- The Finance Minister proposes to phase out exemptions and reduce the corresponding reduction in the rate of corporate tax from **30% to 25%, over the next four years**

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Fund managers in India not to constitute business connection of offshore funds

- Income of a non-resident is taxable in India, if his income is deemed to accrue or arise in India

- Section 9 of the Income-tax Act, 1961 specifies the income which are deemed to accrue or arise in India. As per the provisions of Section 9(1)(i) of the Act, income of a non-resident is deemed to accrue or arise in India, if it is earned through a business connection in India. The income which is attributable to such business connection is taxable in India as per the domestic tax laws

- The provisions of the Act in its current state ensues an exposure to the offshore fund to constitute a business connection in India by virtue of having a fund manager based in India. Consequently, if the fund manager who is based in India executes fund management activity for the offshore fund making investments outside India, the profits earned by such fund could be liable to tax in India due to his presence in India

- In the Finance (No. 2) Act, 2014, the Finance Minister had acknowledged the concerns of offshore funds and had stated that the fund managers of offshore funds remain outside India under the apprehension that their presence in India may have adverse tax consequences. Accordingly, he has provided, in the said Act, that the income arising to foreign portfolio investors from transaction in securities will be treated as capital gains. However, the taxability of fund manager located in India was still ambiguous.

  In order to facilitate location of fund managers of offshore funds in India and settle the issue, it has been proposed that:

  (i) the tax liability of the offshore fund from its investment in India would be neutral to whether the investment is made directly or through a fund manager located in India; and
  (ii) income of the fund from its investments outside India will not be taxable in India if the fund management activity have been undertaken through a fund manager located in India, subject to the satisfaction of certain conditions.

- The offshore fund shall be required to fulfill the following conditions for being counted as an eligible investment fund:

  (i) the fund is not a person resident in India;
  (ii) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of Section 90 or sub-section (1) of Section 90A has been entered into;
  (iii) the aggregate participation or investment in the fund, directly or indirectly, by persons being resident in India, does not exceed 5% of the corpus of the fund;

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(iv) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

(v) the fund has a minimum of 25 members who are, directly or indirectly, not connected persons;

(vi) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund, exceeding 10%;

(vii) the aggregate participation interest, directly or indirectly, of 10 or less members along with their connected persons in the fund, shall be less than 50%;

(viii) the investment by the fund in an entity shall not exceed 20% of the corpus of the fund;

(ix) no investment shall be made by the fund in its associate entity;

(x) the monthly average of the corpus of the fund shall not be less than Rs 100 crore rupees and if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than Rs 100 crore at the end of such previous year;

(xi) the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;

(xii) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;

(xiii) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken on its behalf is not less than the arm's length price of such activity.

- The following conditions shall be required to be satisfied by the person being the fund manager for being an eligible fund manager:

  (i) the person is not an employee of the eligible investment fund or a connected person of the fund;

  (ii) the person is registered as a fund manager or investment advisor in accordance with the specified regulations;

  (iii) the person is acting in the ordinary course of his business as a fund manager;

  (iv) the person, along with his connected persons, shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through such fund manager.

- It has been proposed that every offshore fund, which satisfies the conditions prescribed, shall furnish a statement in the prescribed form to the income-tax authority containing information relating to the fulfilment of the conditions specified, and also provide such other relevant

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information or documents as may be prescribed, in respect of its activities in a financial year. The information needs to be filed within 90 days from the end of the relevant financial year

- The proposed amendment is in line with the Prime Minister's commitment to ensure ease of doing business in India. This is a welcome clarification as it shall help in relocation of fund managers in India, enhancing job opportunities and overall growth of the economy. However, the list of conditions prescribed to be an eligible fund manager or an eligible offshore fund may act as deterrent to achieve the desired result
- Further, Section 271FAB has been proposed to be inserted in the Act to levy penalty on the offshore fund in case of failure to furnish information as required under sub-section (5) of Section 9A within the time prescribed. The income-tax authority may levy a penalty of Rs 500,000 on such funds
- The amendment will be effective from the assessment year 2016-17 onwards

Income deemed to be accrue or arise in India in case of indirect transfers

- The Finance Act, 2012 inserted explanation 5 in Section 9(1)(i), which deals with income deemed to accrue or arise in India, providing that an asset or capital asset having any share or interest in a company or entity, registered or incorporated outside India shall be deemed to be situated in India, if the value of share or interest is derived, directly or indirectly, from the assets located in India
- The said explanation was inserted with retrospective effect from 1 April 1962 to overrule the decision of the Hon'ble Supreme Court in case of Vodafone [341 ITR 1] wherein the Apex Court held that transfer of shares of foreign company, which has inter alia holding the shares of Indian company as being its subsidiary, does not amount to transfer of any capital asset situated in India within the scope of Section 9(1)(i) of the Act
- The applicability of explanation 5 to Section 9(1)(i) of the Act came up for consideration before the Hon'ble High Court in case of Copal Research Ltd wherein the Hon'ble Delhi High Court held that for indirect transfer provisions to trigger, at least 50% of the value of shares of foreign company should derived from assets held in India
- The Hon'ble Delhi High Court has also made reference to the Shome Committee Report and Direct Tax Code (DTC), wherein the term "substantially" was referred to the threshold of 50% of the total value derived from the assets of the entity
- In line with the view expressed by the Hon'ble Delhi High Court in case of Copal Research Ltd and in order to give effect to the recommendation of the Shome

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Committee, it is now proposed that the share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (tangible or intangible) located in India, if on the specified date, the value of Indian assets:
- Exceeds the amount of Rs 10 crores and
- Represents at least 50% of the value of all the assets owned by the company or entity

- Value of asset means gross value without the reduction of liabilities in respect of assets to be determined in the manner prescribed in the rules

- Specified date means:
  (i) date on which accounting period of the company/entity ends, preceding the date of transfer of such share or interest or
  (ii) if the book value of assets of the company on date of transfer exceeds 15% of book value of assets as on the last balance sheet date, then the date of transfer will be the specified date

- It is further proposed to restrict the scope of explanation 5 of Section 9 of the Act by providing that the said deeming provisions of indirect transfer would not apply, wherein the non-resident indulges into an activity involving transfer outside India and transfers the share or interest in a company or an entity which is registered or incorporated outside India if:
  - **Transfer of direct holding company:** Non-resident transferor does not hold the right of management, control, voting power or share capital exceeding 5%, at any time immediately preceding the 12 month period, in the direct holding company i.e. company directly holding shares in the Indian company
  - **Transfer of indirect holding company:** Non-resident transferor does not hold the right of management, control in such company, nor does he hold any right in such other company, which would entitle him to right of management, control, voting power or share capital exceeding 5% in the direct holding company
  - **Amalgamation/ demerger:** Transfer of shares of a foreign company deriving substantial value from shares of an Indian company, in a scheme of amalgamation or demerger between two foreign companies, subject to prescribed conditions. Consequently, the cost of acquisition and the period of holding will be computed with reference to the original investment

- It is also proposed that in a case where all the assets owned directly or indirectly by a company or as the entity referred in explanation 5 of Section 9 of the Act are not located in India, income of a non-resident transferor from such transfer outside India of such share, interest in a company or entity deemed to accrue or arise in India, shall be restricted to such part income as is reasonably attributed to assets located in India and determined in such manner prescribed

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- The above amendment is effective from the Financial Year 2015-16

- The proposed amendment has narrowed down the bracket of explanation 5 of Section 9 of the Act by providing general exclusions and threshold for the term

Taxation of AIFs

- The Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 ('SEBI AIF Regulations') were notified on May 2012. As per the said regulations, the AIF is broadly divided into three categories: Category I, Category II and Category III AIFs, depending upon the strategies, objective and structure of the fund

- The government made the corresponding amendments in the Income-tax Act, 1961 ('Act') vide Finance Act, 2013, wherein the tax pass-through status was accorded only to Venture Capital Funds (VCF) registered as Category I AIF and not to the other AIFs. Accordingly, income of a VCF is taken as exempt in the hands of the fund and taxed in the hands of the investor, being the beneficial owner of the income of the VCF.

- Since, other categories of AIFs have not been accorded tax pass-through status under the Act, the principles of trust taxation would apply to such AIFs formed as Trust. The AIFs (other than VCF) have been structuring their investment to fall within the trust taxation principles based on the Advance Ruling in the case of AIG (In Re: Advance Ruling P. No. 10 of 1996). The AAR in case of AIG had held that it is not required that the exact names of all the beneficiaries should be stated in the trust deed or the exact shares of the beneficiaries be specified for a trust to be considered a determinate trust; as long as there is no uncertainty regarding the beneficiaries and no uncertainty regarding the share of income to which they are entitled. The trust would be treated as a determinate trust even if there is a pre-determined formula by which distributions are made and there are pre-determination of the class of persons who become beneficiaries of the trust

- However, the Central Board of Direct Taxes (CBDT), vide its circular dated 28 July 2014, clarified that the income of a non-charitable AIF would be taxed in the hands of the Trustee at Maximum Marginal Rate (MMR), if the names of investors and their beneficial interest is not specified in the trust deed. Also, the income of a non-charitable AIF, consisting of business income, will be taxable at MMR in the hands of the trustee even though the name of the investors and their beneficial interest is mentioned in the trust deed

- In view of the CBDT circular, it was imperative for the AIFs envisaging investment by way of the trust to amend their structure suitably in order to

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facilitate tax pass-through status as per the provisions of trust taxation of the Act. However, satisfaction of the conditions as per the Act and as per the CBDT clarification was a challenge before the non-charitable AIFs, other than VCF, and resulting in taxation at the MMR

- It is proposed to accord the tax pass-through status to all classes of Category I and Category II AIFs, which are regulated under the SEBI AIF Regulations. The salient features of the proposed framework are as follows:

  – All income of the AIF (except income under the head "profit from business and profession") shall have a pass-through status and income shall be taxed directly in the hands of the unit holder
  – The income shall be taxed in the hands of the unit holder under the same head of income as if the investment was made directly in the investee company
  – Profit from business and profession shall be taxed at AIF fund level only
  – Payment to AIF by investee companies shall be exempt from withholding tax provisions
  – Income (excluding business income) payable to unit holders by the AIF shall be subject to withholding tax @ 10%
  – Loss, at AIF level, shall not be allowed to be passed through to the unit holders. However, such loss shall be eligible for set-off and carry-forward at the AIF level
  – Dividend Distribution Tax and tax on distributed income shall not apply to income paid by AIF to unit holders
  – AIF shall be mandatorily required to file income tax return

- The proposed amendment would provide a relief to the AIFs and their investors, especially considering the July 2014 CBDT circular and the focus towards promoting ease of doing business in India. It is to be noted that even the income accrued to an AIF will be taxed in the hands of investors in the year of accrual, irrespective of the fact whether the income has accrued to investors or not

Minimum Alternate Tax (MAT) on Foreign Portfolio Investors (FPIs)

- The concept of MAT was first introduced in the direct tax system around three decades ago to ensure that companies that have huge book profits and declare substantial dividends to shareholders, pay a fixed percentage of their book profit as MAT, even though their tax liability was much lower. The provisions of MAT are applicable to all companies under the domestic tax laws of India. However, there has been ambiguity on the applicability of MAT provisions on foreign companies, which are not required to maintain their books of account in India

- Presently, MAT is levied at 18.5% (excluding surcharge and education cess) of book profits on certain companies

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- Last year, the Finance Minister in his Budget speech proposed to rationalise the taxation regime for Foreign Portfolio Investors (FPIs) and clarified that securities held by FPIs as per the SEBI FPI Regulations would be classified as capital asset and accordingly income earned on sale of such securities will be considered as capital gains

  However, there have been multiple interpretation on the applicability of MAT provisions on the foreign companies engaged in investment activities in India. The AAR has given contradictory view on this issue. The AAR, in its ruling in case of Timkin In re [326 ITR 193], had held that MAT liability cannot be fastened on a foreign company having no presence in India. Whereas in the case of Castleton Investments Limited [24 taxmann.com 150], the AAR held that MAT would be applicable to a foreign company, irrespective of the fact whether the foreign company has a permanent establishment in India or not. The AAR further held that liability to tax does not depend on the accounting in books and that it arises from chargeability to tax under the Act

- It is worth noting that the starting point for computing tax under MAT is computing book profits of an entity. In case of foreign companies having no presence in India or business income in India, there is no requirement under the domestic law to prepare profit and loss account and balance sheet, thereto. Thus, no obligation is cast on FPIs indulged only in investment activities to prepare or maintain financial statements in India

- However disregarding the practical difficulties faced by such foreign investors, the tax authorities have issued notices to the FPIs asking them to explain why MAT provisions should not be levied in their case on income earned in India, including the long-term capital gains (on which securities transaction tax), which are exempt in India as per the domestic tax laws

- It is proposed to amend the MAT provisions to provide for exclusion of capital gains earned by FPIs. However, short-term capital gains, which are not subject to STT, would still be subject to MAT

- The intention of the government seems to be levying MAT only on the short-term capital gains earned by FPIs resulting from transactions not chargeable to STT. However, there are certain questions that still remained unanswered such as:
  - Requirement of maintaining books of accounts by a foreign company engaged only in investment activities in India
  - Whether all the FPI's, even those with no permanent establishment in India, are required to maintain books of accounts
  - Whether the MAT provisions would be applicable to FPIs for the period prior to the assessment year 2016-17

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- Since the amendment is prospective in nature, the position for the ongoing assessment proceedings will still remain uncertain. The wording of the amendment is ambiguous and can lead to multiple interpretations resulting in litigation

Minimum Alternate Tax (MAT) share of income from Association of Person (AOP)

- As per the provisions of Section 86 of the Act, share of member of an AOP is not subject to income-tax, where such income has been taxed in the hands of the AoP. However, if a company is a member of an AOP, share of such company is liable to MAT
- It is now proposed to amend the computation mechanism of 'book profit' provided in Section 115JB of the Act to exclude share of member of an AOP on which tax is payable by AOP as per the provisions of the Act
- The amendment will provide the much needed relief to the corporate taxpayers who are members of an AOP and are paying taxes as per the MAT provisions

Residential status for companies

- There are two major changes proposed in Section 6 of the Act. The first amendment in Section 6 is in respect to computation of the period of stay of an Indian citizen and the second amendment is in respect to the conditions for determining residency status in respect of companies
- The existing provisions relating to residential status under the domestic tax laws under clause (3) of Section 6 of the Act provides for the conditions under which a company can be said to be resident in India for a previous year. Under the said clause, a company is said to be resident in India in any previous year, if it is a company incorporated

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in India or if the control and management of its affairs is situated wholly in India during the relevant year.

Accordingly, a foreign company will be considered as a non-resident in India if during the year it is partially or wholly controlled and managed from outside India. It has been held by the Hon'ble Delhi High Court in the case of Radha Rani Holdings P. Ltd. [16 SOT 495] that even a partial control of the company outside India is sufficient to hold the company as a non-resident. The Hon'ble Supreme Court has also observed that the control of business does not necessarily mean carrying on of the business as held in the case of Erin Estate, Galah, Ceylon [34 ITR 1]. Thus, it would be feasible for a company to carry its business activities in India and still enjoy the benefit of being a non-resident by virtue of having its control and management outside India

- In the e-commerce age, the requirement of having entire control and management in India for the full year has become impractical. One could keep itself outside the ambit of the term 'resident' as per Section 6, even by holding one board meeting outside India

- It is proposed to amend the provisions of Section 6 to provide that a company will be resident in India if it is an Indian company or its place of effective management (POEM) is in India at any time during the relevant year

- The POEM is proposed to be defined to mean a place where key management and commercial decisions are undertaken. The key decisions could be the ones which are necessary for the conduct of the business of an entity as a whole

- The concept of the POEM in determining residential status of companies would bring the provisions of the Act at par with the internationally accepted standards and also will be in line with the tax treaties entered into by India with other countries

- The Double Tax Avoidance Agreements (DTAA) executed by India with most of the countries acknowledges the concept of POEM for determining residence country and source country. POEM is a concept used across jurisdiction to determine residential status of a company incorporated in a foreign jurisdiction. The Organisation of Economic Cooperation and Development (OECD) also acknowledges principles of POEM as an analysis to determine residential status of a company. The definition of POEM, as proposed in the Finance Bill, is in line with the definition accorded in the OECD commentary on model convention of DTAAs

- Further, it is proposed that guiding principles for the determination of POEM will be issued for the benefit of taxpayers and the revenue authorities shortly

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- This is a welcome change to curb the practice of creating shell companies which are incorporated outside but controlled from India

- These provision can have significant impact on outbound investment made by Indian companies, where the Indian management continues to play a significant role in running and managing the foreign subsidiary

Taxability of interest payable by a Permanent Establishment (PE) of a non-resident engaged in the business of banking

- The interest taxable by the Indian branch of an overseas banking entity to its Head Office and overseas branches and withholding taxes thereon by an Indian branch on such interest payments has always been a subject of litigation. An explanation has been proposed to be inserted after Section 9(1)(v) of the Act stating that any interest paid by Indian branch to the head office and overseas branches is taxable in India and liable for withholding taxes thereon in India

- Interest paid to the head office or any overseas branch is, however, eligible for deduction as expenditure in computing the Income of PE of a non-resident bank in India. Further, the proposed amendment will overrule the decision of the Hon'ble Calcutta High Court in case of ABN Amro Bank, NV vs CIT [198 taxman 376] and decision of ITAT Special Bench in case of Sumitomo Mitsui Banking Corp vs Deputy Director of Income tax [19 taxmann. com 364] wherein it has been held that where an Indian branch of a foreign bank pays interest to head office and other overseas branches of said foreign bank, on advances received by it, the said interest is neither deductible in hands of the Indian branch nor chargeable to tax in hands of head office and overseas branches, all being single entity

- The said amendment is in line with the CBDT Circular 740 dated 17 April 1996, which had clarified that branch of a foreign company/ concern in India is to be considered a separate entity for the purpose of taxation. Interest paid/ payable by such branch to its head office or any branch located outside India would be taxable in India and would be governed by the provisions of Section 115A of the Act

- The amendment also overrides the stand taken in various judicial precedents such as Mitsubishi Ltd vs Director of Income-tax, Mumbai [53 taxman.com 105] and Deutsche Bank AG vs Assistant Director of Income-tax [47 taxman.com 105] wherein it was held that in case of the assessee being a non-resident bank, any interest paid by the Indian branch to the head office and overseas branches were not taxable in India as it is payment to self and therefore no withholding tax is required to be deducted while making the said payments

- The aforesaid amendment will be effective from the financial year 2015-16

- The proposed amendment puts an end to all the queries or ambiguity in relation to taxability of interest paid by the Indian branch of an overseas banking entity to its head office and overseas branches and, accordingly, to withholding taxes, thereon

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- However, since it is proposed that the PE/ branch in India shall be deemed to a person separate and independent of the non-resident person, the provisions of Act relating to the computation of income, determination of tax shall apply accordingly

Taxation of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trust (InvITs)

- The Finance (No. 2) Act, 2014 provided a special tax regime for income earned by REITs and Invits including the income earned by the investors of REITs/ Invits
- The REITs and Invits are collectively referred to as Business Trust. Business trust has been defined as per Section 2(13A) of the Act to mean an Infrastructure Investment Trust registered under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 or a Real Estate Investment Trust registered under the SEBI (Real Estate Investment Trusts) Regulations, 2014, and the units of which are required to be listed on the recognised stock exchange
- The existing provision of the Act provides for deferral of capital gains in the hands of the sponsor of business trust in case of transfer of asset to the trust. However, the sponsor is at a disadvantageous tax position as the benefit of the concessional tax rate relating to capital gains arising on transfer of shares subject to levy of STT has not been extended to the sponsors. The preferential tax treatment is not made available to the sponsor at the time it offloads units of business trust acquired in exchange of its shareholding in the SPV through the initial offer at the time of listing the business trust on the stock exchange
- The salient feature of the proposed tax regime for the business trust are as below:
  - Rental income earned by REITs from directly owned real estate assets shall have a pass-through status
  - No withholding tax on rental income earned by REITs from directly owned real estate assets - w.e.f. 1 June 2015
  - Withholding tax on distribution of rental income (w.e.f. 1 June 2015)
  - Where the unit holder is a resident, REIT to withhold tax @ 10%
  - Where unit holder is a non-resident, REIT to withhold tax as per rates in force
  - Units received by Sponsors of REITs and InvITs on swap of shares in special purpose vehicles (SPVs) shall be

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entitled to beneficial tax treatment, whereby sale or transfer of such units shall be exempted from tax for long-term capital assets and taxed at 15% for short-term capital assets. This treatment will be available, provided the sale of such units has been subjected to STT

- The taxation regime for REITs/ Invits and its sponsors have been summarised in the table below:

Nature of income	REIT and InvIT	Unit holders including sponsor
Interest from SPV	Exempt	Taxable as interest income TDS to be deducted by REIT on distribution (Non-resident – 5%, Others – 10%)
Dividend	Exempt	Exempt
Capital gains on exit by REIT/ InvIT	Exempt	At the rates applicable on capital gains
Capital gains earned by unit holders or Sponsors on sale of REIT/ InvIT units	Not applicable	Long-term: Exempt Short-term : 15%
Rental income	Exempt (only for REITs)	Taxable at the applicable rates
Profits and gains of business and profession	At the MMR (30%)	Exempt

Core Settlement Guarantee Fund

- As per the SEBI regulations on pertaining to stock exchanges and clearing corporations, the clearing corporations are required to establish a fund, called the Core Settlement Guarantee Fund (CSGF). The CSGF needs to be set up for each segment of all the recognised stock exchange in order to guarantee settlement of trades executed in the respective segments of the exchange
- As per the current provisions of the Act, income, by way of contributions to the Investor Protection Fund, set up by recognised stock exchanges in India, or by commodity exchanges in India or by a depository, are exempt from tax. However, the exemption was not available to the CSGF, which are also set up in accordance with the SEBI regulations
- It is proposed that the contribution received and investment made by CSGF and penalties imposed by the clearing corporation will be exempt from tax. This would bring the CSGF at par with the investor protection fund
- However, if any amount not charged to income-tax during any previous year and standing to the credit of the Fund is shared with the recognised clearing corporation which establishes and maintains the CSGF and the recognised stock exchange is the shareholder of such clearing corporation, the whole of such amount shall be the deemed income of the year in which it is shared

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Global Depository Receipts (GDRs)

- The definition of GDR has been amended to mean any depository receipt or certificate created by the Overseas Depository Bank outside India and issued to investors (resident as well as non-residents) against the issue of;
  - ordinary shares of a company listed on recognised stock exchange in India; or
  - foreign currency convertible bonds of the issuing company
- The amendment will result in providing the beneficial tax scheme to the sponsored GDRs and listed companies only as per the revised definition of GDR

Consolidation of similar schemes of mutual funds not to be regarded as transfer

- SEBI has been encouraging mutual funds to consolidate different schemes having similar features so as to have simple and fewer numbers of schemes. However, such mergers/ consolidations are treated as transfer and capital gains are imposed on unit holders under the Act
- Recently, certain mutual funds have decided to consolidate their similar schemes which are floated in the market to optimise operational, financial, tax and regulatory efficiency in accordance with the SEBI (Mutual Funds) Regulations, 1996
- The units forfeited/ exchanged by the investor upon consolidation of two mutual fund schemes are considered as taxable transfer and thus, the investor needs to bear the capital gains on such consolidation
- To encourage merger of similar schemes of mutual funds, it is proposed to amend Section 47 of the Act to exclude transfer by a unit holder of a mutual fund in consideration of units received upon consolidation or merger of similar schemes of mutual funds from the ambit of taxable transfer
- Further, corresponding amendments under Section 49 of the Act have also been proposed. Accordingly, cost of acquisition of the units of consolidated scheme shall be the cost of units in the consolidating scheme and period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the investor
- The amendment would encourage the mutual fund industry to merger the similar schemes of mutual funds which would facilitate improved regulatory reporting considering the fewer number of funds. This would also provide relief to the investors who have been bearing the tax cost on such merger of schemes under the existing tax regime

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Cost of acquisition in the scheme of demerger

- As per the present provisions of Clause (vib) of Section 47 of the Act, any capital asset transferred by the demerged company to the resulting company in the scheme of demerger is not regarded as transfer, if the resulting company is an Indian company. Accordingly, in such cases the cost of capital asset in the hands of resulting company should be the cost of asset in the hands of demerged company and should be increased by cost of improvement, if any, incurred by the demerged company. Further, the period of holding of such asset in the hands of the resulting company should also include the period for which the asset was held by the demerged company. However, under the existing provisions of the Act, there is no corresponding provision with respect to cost of acquisition under Section 49 of the Act

- Accordingly, it is proposed to amend sub-clause (e) of clause (iii) of sub-section (1) of Section 49 of the Act to include transfer of capital asset in a scheme of demerger to the resulting company, being an Indian company, and to provide that the cost of acquisition of a capital asset acquired by the resulting company shall be the cost for which the demerged company acquired the capital asset, as increased by the cost of improvement incurred by the demerged company

- The period of holding by the demerged company will also be taken into consideration

GAAR provisions deferred

- The Finance Act, 2012 had inserted Chapter X-A dealing with the provisions of General Anti-Avoidance Rule (GAAR) to be effective from 1 April 2014. Subsequently Finance Act 2013 amended the provisions of Chapter X-A and the GAAR provisions would come into force from 1 April 2016

- It is proposed that provisions of GAAR should be deferred for another two years and should be applicable from the financial year 2017-18.

Deduction in respect of Health Insurance Premium under Section 80D of the Act

- Section 80D of the Act provides for tax deduction from total taxable income for the payment of Medical Health Insurance paid by an Individual or HUF by any other mode other than cash, up to Rs 15,000 for an individual assessee and Rs 20,000 for senior citizen

- It is proposed to increase the limit of deduction under Section 80D of the Act from Rs. 15,000 to Rs. 25,000 for individual assessee and from Rs. 20,000 to Rs. 30,000 for senior citizens

- Further, there has been an amendment in Section 80D of the Act that deals with senior citizens i.e. individuals above 80 years of age. It is proposed that any payment on account of medical expenditure in respect of the senior citizens, if no payment has been

Direct tax proposals

made to keep in force an insurance on the health of such person, the deduction shall be allowed up to Rs 30,000

- The increased limit shall apply from the financial year 2015-16 onwards
- It is a welcome move, which has been brought in, keeping into account the increased cost of medical expenses. This is suggested as a welfare measure for the senior citizens as they are often not eligible or are unable to get health insurance coverage

Deduction in respect of contribution to certain pension funds under Section 80CCC of the Act

- Under the existing provision of sub section (1) of Section 80CCC of the Act, an assessee, being an individual, is allowed a deduction up to Rs 1 lakh in the computation of total income for the amount paid or deposited by him to keep in force any contract for any annuity plan of LIC or any other insurer for receiving pension from a fund set up pension scheme
- It is proposed to amend sub section (1) of Section 80CCC of the Act so as to increase the limit of deduction from Rs 1 lakh to Rs 1.5 lakh within the overall bracket, as defined under Section 80CCE of the Act
- The increased limit shall apply from financial year 2015-16 onwards
- The amendment has been brought with a view to promote social security and will boost investment in pension funds. The said amendment will boost the pension business in India

Deduction in respect of contribution to pension schemes of Central government under Section 80CCD of the Act

- Under the existing provisions of Section 80CCD of the Act, deduction is allowed for contributions made to Notified Pension Schemes (NPS) of Central government by an individual up to Rs 1 lakh
- It is proposed to increase the limit of deduction under Section 80CCD of the Act on account of contribution made by an employee to NPS from Rs 1 lakh to Rs 1.5 lakh
- A new sub-section has been added to provide for an additional deduction in respect of any amount paid up to Rs 50,000 for contribution made to NPS by an individual assessee
- The additional benefit of Rs 50,000 is over and above the benefit of Rs. 1.5 lakh allowed to be claimed under Section 80C of the Act
- The increased limit shall apply from financial year 2015-16 onwards
- It is a welcome move, which will encourage people to contribute towards NPS of the Central government. Further, it will be advantageous for the insurance sector as the same would enable business growth

Direct tax proposals

Deduction in respect of donations to certain funds, charitable institutions etc

- Under the existing provision of Section 80G of the Act, an assessee is allowed a deduction from his total income in respect of donations made by him to certain funds and charitable institutions
- The deduction is allowed at the rate of 100% of the amount of donations made to certain funds and institutions formed for a social purpose or of national importance
- It is proposed to provide 100% deduction in respect of donations made to the National Fund for Control of Drugs Abuse set up by Government of India in 1989
- The amendment will take effect from financial year 2015-16 onwards
- It is also proposed to provide a deduction of 100% of the amount donated by any donor to "Swachh Bharat Kosh" set up by the Central government and a deduction of 100% of the amount donated by a resident assessee to the "Clean Ganga Fund" set up by Central government
- The amendment will take effect retrospectively and, accordingly, will be applicable from financial year 2014-15 onwards
- The amendment will encourage the participation of people in the cleaning and sanitisation efforts at national level

Filing the self declaration for non-deduction of tax on payment made under the Life Insurance Policy

- Finance Act, 2014 introduced Section 194DA of the Act with effect from 1 October 2014 ,wherein it is provided that provision of withholding taxes at the rate of 2% under Section 194DA of the Act would trigger, if the aggregate sum paid during the financial year under the Life Insurance Policies, including sum allocated by way of bonus which are not exempt under Section 10(10D) of the Act, is Rs 1 lakh or more
- The existing provisions of Section 197A of the Act, *interalia*, provides that tax shall not be deducted, if the recipient of certain payment to which tax is deductible furnishes to the payer a self declaration in the prescribed Form 15G/15H, declaring that tax on the estimated total income of the relevant previous year is Nil
- It is therefore proposed to amend Section 197A of the Act enabling the recipient of payment made under the Life Insurance Policy as referred to under Section 194DA of the Act to file Form 15G/15H for non-deduction of tax
- The amendment will take effect from 1 June 2015 onwards
- It is a welcome move which has cleared the ambiguity around filing Form 15G/15H for receipts under the Life Insurance Policy and withholding tax thereon as referred to in Section 194DA of the Act. Further, the said amendment is beneficial for functioning and administration of the life insurance companies

Direct tax proposals

Applicability of withholding tax on interest on time deposit by Co-operative banks

- The existing provision of Section 194A(1), read with Section 194A(3)(i) of the Act, provides for deduction of tax on interest (other than interest on securities) over a threshold limit i.e. Rs 10,000 for interest payment by banks and co-operative societies engaged in the banking business
- Further, sub-section 3 of Section 194A of the Act provides for exemption from deduction of tax in respect of interest payment by co-operative society to its members or any other co-operative society
- Presently, any interest payment made by a co-operative society to its members is exempt from withholding tax provision. The co-operative banks generally take the benefit of the provision by making their depositors as members under different categories
- To avoid such practice, the existing provision proposes to amend the provisions of the Act to provide that exemption provided from deduction of withholding tax from payment of interest to members by a co-operative society shall not apply to the payment of interest on time deposits by a co-operative bank to its members
- Accordingly co-operative banks will be required to withhold taxes on payment of interest even to its members on such deposits, with effect from 1 June 2015

Applicability of withholding tax on interest on Recurring Deposit

- As per the existing provisions of the Act, tax is required to be deducted on time deposits. The term 'time deposits' has been provided under Section 194A of the Act which specifically excludes recurring deposits from its scope
- It is now proposed to include interest on recurring deposits within the ambit of Section 194A of the Act
- Accordingly, tax is required to be deducted on interest on recurring deposits exceeding the threshold limit of Rs 10,000
- This would result in additional compliance burden on the banks ensuring that the tax is deducted appropriately as per the provisions of the Act on recurring deposits
- The amendment is effective from financial year 2015-16 onwards. The banks would need to ensure that they have appropriate infrastructure and mechanism in place to comply with these provisions even before the Bill is passed since it would take some time before these provisions are enacted into law

Applicability of withholding tax on interest on enhanced compensation under the Motor Accident Claim Tribunal

- Presently, under the Act, tax is required to be deducted at source on any interest paid or credited, whichever is earlier on the compensation awarded by Motor Accident Claim Tribunal, if the amount of such interest paid or credited is exceeding Rs 50,000.

Direct tax proposals

- The provisions of Section 56(2) and Section 145A of the Act provides that interest received on compensation would be deemed to be income of the taxpayer in the year of receipt

- In view of the above, it was imperative to bring clarity on the taxability of interest income on receipt or accrual. Accordingly, the issue of withholding tax at source needed to be addressed

- It is now proposed that withholding of tax under Section 194A of the Act on the interest payment on the compensation awarded by Motor Accident Claim Tribunal to be deducted in the year of payment if such interest paid exceeds Rs 50,000

- The amendment is effective from 1 June 2015

Applicability of withholding tax on interest income for entities engaged in core banking solutions

- As per the existing provisions of the Act, computation of interest income for the purpose of deduction of tax at source in case of banking company or co-operative bank or other public company is taken branch wise. There is no rationale for continuing branch-wise calculation of interest by the entities which have adopted core banking solutions

- It is now proposed that in case of entities which have adopted core banking solutions, the computation of interest income for the purpose of deduction of tax should be made taken into consideration as income credited or paid by such entities

- The amendment is effective from 1 June 2015

Withholding tax on royalty and fees for technical service

- Under the existing provision of Section 115A of the Act, any payment made to a non-resident by way of royalty and fees for technical services is liable for withholding tax at the rate of 25%

- It has been proposed to reduce the rate of withholding tax from 25% to 10% under Section 115A of the Act on such royalty and Fees for technical services payments to a non -resident

- The amendment will come into force from financial year 2015-16

- The amendment would reduce the hardship faced by small entities due to such high rate of withholding tax of 25%

- However, to avail benefit of the amendment, it is necessary for the non-resident recipients of such income to obtain a PAN in India. Failure to obtain a PAN could trigger withholding tax at a higher rate

Penalty on tax sought to be evaded

- Currently, penalty on concealment of income or furnishing of inaccurate particulars, is levied on the tax sought to be evaded as calculated under the general provisions of the Act

- The revenue authorities, in the past, have levied penalty under Section 271(1)(c) of the Act.

Direct tax proposals

The Delhi High Court in case of Nalwa Sons Investment Ltd. vs CIT [194 taxman 387] held that when assessment was made on income computed under Section 115JB (MAT) and tax had been paid on income so computed, penalty under Section 271(1)(c) would not be imposed with reference to additions that would have been made taking into account concealment made by an assessee while making assessment under the normal procedure. The Revenue had filed a special leave petition against the Delhi High Court judgment which was dismissed by the Hon'ble Supreme Court

- In light of the above jurisprudence, it is proposed to amend Section 271(1)(c) of the Act to include tax payable under MAT and Alternate Minimum Tax (AMT) on concealed income for the purposes of levying penalty. The proposed amendment would overrule the aforesaid judgment

- Further, it has been clarified that if concealment of income pertaining to an issue is considered both under the general provisions as well as MAT / AMT provisions, then such income will not be included for the purpose of computing tax sought to be evaded under MAT/ AMT provisions. It has also been clarified that in a case where MAT/ AMT provisions are not applicable, the computation of tax sought to be evaded under MAT / AMT provisions shall be ignored

Rectification of mistakes apparent from record – Section 245D of the Act

- As per the existing provision under the Act, mistakes which are apparent from record in the order passed by the Settlement Commission under the provisions of the Act can be rectified within a period of six months from the date of order

- It is proposed to extend the effective time for rectification of mistake apparent from record by providing that Settlement Commission can rectify any mistake apparent from record within a period of six months from the end of the month in which an application for rectification has been made by the applicant or department where such application is made before the end of six months from the end of the month, in which the order is passed

- The amendment will be effective from 1 June 2015

Enabling the provision for Foreign Tax Credit – Section 295 of the Act

- The existing provision of the Act does not provide for any rules or mechanism in which taxes paid outside India will be granted to the taxpayer

- It is proposed to insert the provision in sub section 2 of Section 295 of the Act to provide that the CBDT may make and notify Rules or procedure for granting relief or deduction in respect of taxes paid outside India on any income

Direct tax proposals

under section 90/90A/91, as the case may be

- The amendment will be with effect from 1 June 2015

- The amendment would enable the assessee to claim Foreign Tax Credit in India while filing return of income

Abolition of wealth tax

- The levy of wealth tax under the Wealth Tax Act, 1957 is proposed to be abolished from the financial year 2015-16

- The loss to revenue on account of such abolition of wealth tax is proposed to be compensated by increase in the existing rates of surcharge by 2% in case of domestic companies and non-corporate taxpayers i.e. super-rich people

Accepting of giving loans and deposits

- Section 269SS of the Act prescribes transaction rules for taking loan or deposit from any person. In case the value exceeds Rs 20,000, the transfer of funds for the above mentioned purposes needs to be made through banking channels (and not by a bearer cheque) except for certain transactions as provided in the Act.

- Similarly, Section 269T of the Act lays down conditions for cashless transactions for repayment of loans and deposits wherein the value exceeds Rs 20,000

- It is now proposed to amend both the above sections i.e. Section 269SS and Section 269T to include within its ambit transactions relating to immovable property which is not covered under the existing provisions of the Act

- As per the proposed amendment, the section is substituted to include within its ambit the payment and repayment of loans, deposits and any other “specified sum”. Specified sum is proposed to mean any sum in relation to transfer of an immovable property whether as advance or otherwise irrespective of the fact whether transfer takes place or not. The transaction limit for cash transactions are set at Rs 20,000

  The amendment comes as a strong move to try and monitor and control the movement of black money which is often routed through transactions of immovable property

- Further, it has been proposed to levy penalty equal to the amount of transaction in case of failure to comply with the provisions in respect of accepting or giving loans, advances or deposits

- The amendment is one of the measure to discourage cash transactions. However, since the Act does not define 'loan' or 'deposit', clarity on the transactions which could be considered as a 'loan' or 'deposit' is still awaited

Direct tax proposals

Tax avoidance

- Various measures to discourage cash transactions have been introduced in the Finance Bill wherein a new comprehensive Benami Transactions (Prohibition) Bill is proposed to be introduced to cover benami properties especially in real estate

- Further, a new law is proposed on control of black money and its salient features are as follows:
  - Prosecution for default with punishment of rigorous imprisonment up to 10 years
  - Offences under this Bill shall be non-compoundable
  - The defaulter cannot approach the Settlement Commission
  - Penalty shall be levied @ 300% of tax evaded
  - Foreign assets will be required to be disclosed in the tax return and non-compliance shall attract prosecution and rigorous imprisonment of up to seven years
  - Income from such undisclosed foreign asset shall be taxed at the maximum marginal rate without any exemptions or deductions
  - Beneficiaries of foreign assets shall be mandatorily required to submit return of income even if there is no taxable income
  - Date of opening of foreign account mandatorily required to be specified by the taxpayer in the return of income
  - Any offence under this Bill shall be treated as an offence under the Prevention of Money-laundering Act, 2002 (PMLA), enabling attachment and confiscation of unaccounted assets held abroad and as well as prosecution
  - Suitable amendments under FEMA are also envisaged to permit confiscation of equivalent Indian assets and levy of penalty along with prosecution with punishment of imprisonment up to five years

Other significant amendments

- Provision for lower withholding tax of 5% on interest on certain corporate bonds and government securities paid to a Foreign Institutional Investors (FPIs) or a Qualified Foreign Investor (QFI) have been extended up to 30 June 2017

- The threshold for applicability of domestic transfer pricing provision has been increased from Rs 5 crore to Rs 20 crore

- It is proposed that the person making payment of any sum which is chargeable under the head salary is required to obtain the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form for the purposes of estimating income of the payer or computing the deductible tax

- It is proposed that the person responsible for making payment to a non-resident, any sum whether or not chargeable under the provisions of the Act, shall furnish the

Direct tax proposals

information relating to such payment of such sum in the prescribed form. Failure to file the information will attract penalty of Rs 100,000

- It is proposed to insert new provision for deduction of tax at the rate of 10% on pre-mature taxable withdrawal from Employee Provident Fund Scheme (EPFS). However, to reduce the compliance burden of the employees having taxable income below the taxable limit, it is proposed to provide a threshold of Rs 30,000 for applicability of this proposed provision. Further, a facility of filing self-declaration in Form No. 15H for non-deduction of tax shall also be extended to the senior citizen employees receiving pre-mature withdrawal

- It is proposed that if a foreign company derives its value substantially from the assets located in India (directly or indirectly), and such company also holds assets in India (directly or indirectly) in an Indian concern, then the Indian concern (i.e. the investee company) shall file information with the tax authorities in prescribed form within the prescribed time limit. This is required to determine if any income accruing or arising in India in the hands of the foreign company. Failure to report under the said provisions would attract a penalty as specified below:
  - A sum equal to 2% of the value of the transaction if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;
  - A sum of Rs. 500,000 in any other case.

Indirect Tax proposals

Headline rates of central excise and service tax proposed to be increased, subsuming all cess levied on them.

Service tax proposals

Increase in rate

(Effective from a date to be notified by the government after the enactment of the Finance Bill, 2015)

- Rate of service tax to be increased from 12.36% (inclusive of all cess) to 14% (subsuming all cess)

- Enabling provision to be incorporated to empower the Central government to impose Swachh Bharat cess of 2% on taxable services. However, availment of CENVAT credit of such cess has not been specifically mentioned

- The increase in rate is in line with the government's objective to introduce GST w.e.f. April 2016 wherein all goods and services will be liable to a single rate which is expected to be higher than the current rate

- However, there is no transition provision for utilisation of accumulated cesses under Rule 3 of Cenvat Credit Rules, 2004, which provides that the credit of education cess or secondary and higher education cess can be utilised only for payment of education cess or secondary and higher education cess, respectively

Inclusion of reimbursable expenses in the value of taxable services

Effective from date of enactment of the Finance Bill, 2015.

- The Delhi High Court in case of Intercontinental Consultants & Technorats (P) Ltd. v. Union of India [2013 (29) STR 9 (Del)] held that:
  - Rule 5 (1) of the Rules is ultra vires Section 66 and Section 67 of the Finance Act, 1994, since it travels beyond the scope of the aforesaid sections
  - The expenditure or costs incurred by the service provider in the course of providing the taxable service cannot be considered as part of the gross amount charged by the service provider for the services provided

- To overcome the aforesaid decision of the Delhi High Court in Intercontinental Consultants, the definition of 'consideration' in explanation to Section 67 is amended to include any reimbursable cost incurred by the service provider and charged in the course of providing or agreeing to provide a taxable service

Indirect tax proposals

Levy of service tax on services of chit fund foremen

- The 'Taxation of Services - An Education Guide' dated 20 June 2012 clarified that Services provided by foreman of a chit fund would not be a transaction in money, and hence would be liable to tax. However, the Delhi High Court in the case of Delhi Chit Fund Association v Union of India [2013 (30) STR 347 (Del)] held that services provided by a foreman of a chit fund, being an activity in relation to a transaction in money, would be excluded from the ambit of 'Service'.

- An explanation has been inserted to the definition of "service" under the Finance Act, 1994 (effective from a date to be notified by the government after the enactment of the Finance Bill, 2015) to affirm that activities of a foreman of a chit fund for conducting or organising a chit in any manner, is not tantamount to a "transaction in money" and are therefore liable to service tax

- Simultaneously, as the abatement for services in relation to a chit is being removed, chit fund foremen will be required to discharge tax on the full consideration received by way of fee, commission or any such amount, and would be entitled to avail CENVAT Credit (effective from 1 April 2015)

- The proposed amendment in explanation 2 specifically states the intention of the legislature to levy service tax on such activities undertaken by chit fund foremen

Alternative composite service tax rates

- Rule 6 provides alternative composite rates of service tax for services of money changing services and insurance services from a date to be notified by the government after the enactment of the Finance Bill, 2015.

- On account of upward revision of service tax rate from the current 12.36% to 14%, the composite rates have been proportionately increased as given below:

Particulars	Pre-budget rates	Post-budget rates
Life insurance services		
First year of policy	3% of premium charged	3.5% of premium charged
Subsequent years	1.5% of premium charged	1.75% of premium charged
Purchase and sale of foreign currency including money changing		
Up to INR 100,000	Minimum Rs 30 or 0.12%	Minimum Rs 35 or 0.14%
From INR 100,001 to INR 10,00,000	Rs 120 + 0.06% of gross amount exceeding Rs 1,00,000	Rs 140 + 0.07% of gross amount exceeding Rs 1,00,000
Exceeding INR 10,00,000	Rs 660 + 0.012% of gross amount exceeding Rs 10,00,000, maximum Rs 6,000	Rs 770 + 0.014% of gross amount exceeding Rs 10,00,000, maximum Rs 7,000

Indirect tax proposals

Review of exemptions

(effective 1 April 2015)

- Exemption has been provided to life insurance service provided by way of Varishtha Pension Bima Yojana

- Exemption withdrawn on services provided by mutual fund agent or distributor to a mutual fund or assets distributor or AMC

CENVAT Credit Rules, 2004

- The period of availing CENVAT credit on inputs and input services extended from six months to one year from date of invoice/ challan or other specified documents (effective from 1 March 2015). The proposed amendment does not do away with time limits for availment of CENVAT Credit. It however provides a relief by enhancing the time limit by another six months

- CENVAT credit of service tax paid under domestic reverse charge now allowed to the claimant, without linking it to the payment of services to the input service provider (effective from 1 April 2015). Accordingly, CENVAT credit in respect of services falling under partial reverse charge mechanism can be availed immediately on payment of service tax and thus the condition of availing CENVAT credit only on payment to the service provider, has been done away with

- Effective from 1 March 2015, CENVAT credit wrongly taken (i.e. availed) or utilised by manufacturer or output service provider to attract recovery proceedings under Central Excise Act and Service Tax Law respectively with similar penalties (effective from enactment of Finance Bill, 2015) thus, reinforcing the earlier verdict of the Supreme Court in Union of **India v. Ind-Swift Laboratories Ltd [2011 (265) ELT 3**].

- CENVAT credit taken would be deemed to have occurred on last day of the month and utilisation would follow the following hierarchy:
  – Opening balance of month to be utilised first
  – Credit admissible under CENVAT Credit Rules (CCR) taken during the month to be utilised next
  – Credit inadmissible in terms of CCR taken during the month utilised thereafter

Service tax under reverse charge

(Effective 1 April 2015)

- Change in reverse charge percentages for specifies services prescribed as follows:

Service	Pre-budget rate		Post-budget rate	
	Service provider	Service recipient	Service provider	Other than Service provider
Manpower services by non-corporates	25%	75%	0%	100%
Mutual fund agent	No reverse charge applicable		0%	100%
Mutual Fund (MF) Distributor to MF or AMC	No reverse charge applicable		0%	100%

Indirect tax proposals

- Services of mutual fund agents have been brought at par with services of insurance agents. In line with reverse charge mechanism for services of an insurance agent to a person carrying insurance business, 100% reverse charge mechanism has been introduced for the services of a mutual fund agent

Recovery of tax and penalty provisions

- Where service tax disclosed as payable in returns but amounts not paid, coercive measures of recovery could be initiated without servicing notice

- Penalty provisions rationalised in favour of the taxpayer in the following manner: (effective from date of enactment of the Finance Bill, 2015)

Event	Amendment
Notice to recover service tax not paid/ short paid	If disputed service tax paid within 30 days from receipt of Notice
(a) in cases not involving fraud, etc.	(a) No penalty to be charged (If disputed service tax paid after 30 days in cases not involving fraud, penalty reduced from 50% to 10%)
(b) in cases involving fraud, etc	(a) penalty reduced from 100% to 15% in cases where fraud involved
Order passed for recovery of service tax	If service tax paid within 30 days of the Order, penalty reduced to 25% of amount demanded in said Order

- While the earlier penal provisions provided for a maximum penalty equivalent to the duty sought to be evaded, the amended provisions seek to cap the maximum penalties to 10% of the duty sought to be evaded

- Discretion to levy penalty under Section 80 available to Revenue authorities to be omitted. The omission of this Section is a big setback for many cases where penalties imposed could have been waived when the assessee proves that there was a reasonable cause for the failure to pay

Customs Duty proposals

- Effective rate of customs duty increased from 28.85% to 29.44% on account of increase in the excise duty rate (effective from 1 March 2015)

- Parts and components of cash dispenser and automatic bank note dispensers exempt from Basic Customs Duty

- Settlement Commission not to hear matters where Appellate Authority has remanded cases back to Adjudication Authority for *de novo* assessment. Such amendment is in line with the amendment under Central Excise law

- Class of persons eligible to approach the Advance Ruling authority now includes specified Resident partnership firms as defined under the Customs Act

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A comprehensive suite of tax and regulatory services

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