ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

UNION BUDGET 2018

An Exclusive Analysis

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Preface

Dear Reader,

On behalf of ELP I am delighted to present our analysis of the Union Budget 2018-19, delivered by the Honourable Finance Minister Mr Arun Jaitley. In what is the last full-fledged budget prior the General Elections in 2019, the Finance Minister has sought to provide an impetuous with targeted measures designed to keep the growth momentum going.

Most noteworthy are:

- On the Direct tax front, the Budget has benefitted the rural sector, senior citizens and micro, small and medium enterprises, by:
    - providing a tax incentive to the rural population for promoting post-harvest activities of agriculture through Farmer Producer Companies which have been set up along the lines of co-operative societies;
    - providing a tax incentive to the rural population for promoting post-harvest activities of agriculture through Farmer Producer Companies which have been set up along the lines of co-operative societies;
    - for the small and medium sectors only the Finance Minister has prescribed lower corporate tax rate targeted for companies which have reported turnover up to INR 250 crore (in the financial year 2016-17). (This is a disappointment as the Finance Minister has deviated from his commitment in earlier Budget Speech where the tax rate for all corporates was promised to be of 25%).
- On the Customs duty front, India has after many years changed its peak customs duty rates. This is apparently done with the view to boost the 'Make in India' campaign of the Government.
- The fact that GST leading to robust tax collection is very welcome given that the former Indirect tax regime in India was in dire need of simplification and modernisation.

India has always been an agrarian economy, and the Budget has set out programmes to benefit this sector. In this direction, the allocation of INR 500 crores for "Operation Green" would go a long way raising the technology as well as production and at the same time ensuring output to feed the population.

On the social welfare front, the highlight is the allocation to establish one of the largest healthcare insurance programmes in the world. The rising cost of healthcare and vulnerability of all those at the lowest end of the population has been a long-standing concern. This Budget proposes to provide coverage up to INR Five lakhs per family per year for secondary and tertiary care hospitalisation to more than ten crore (i.e. 100 million) poor and vulnerable families (approximately 500 million beneficiaries) by allocating adequate finds.

The Rural Infrastructure Development and the Swatch Bharat Abhiyan continue to receive major allocations; along with the government's flagship programmes on affordable housing. Even issues like pollution in Delhi NCR have received an allocation under this budget.

All in all from the nation's perspective this Budget should be lauded for the scope of issues it targets. What is critical is that these are implemented and the momentum is translated into opportunities for the population. India needs to generate one million new jobs every month. If we miss this opportunity, India will delay in taking its rightful place as the leading economy of the world.

As always we welcome your comments and feedback.

Finally, we are hosting a series of the sector-specific webinar on 2 February 2018 as follows:

Sectors	Time
Manufacturing, Mining and Engineering (including Auto and Auto-ancillary)	**10.00 am to 10.45 am**
Pharmaceutical, FMCG and E-commerce	**11.15 am to 12.00 noon**
Real Estate, Infrastructure and EPC	**12.30 pm to 1.15 pm**
Transport and Logistics (Shipping, Aviation, Multimodal, Ports and other Logistics Support)	**2.00 pm to 2.45 pm**
Financial Services (Banks, Insurance, Mutual Funds, NBFC, etc.)	**3.15 pm to 4.00 pm**
TMT and Hospitality	**4.30 pm to 5.15 pm**

Please do join us as we discuss the nuances of the budget in details.

Best,
Suhail Nathani
Managing Partner

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Budget Highlights

Indirect Tax

- Social Welfare Surcharge on imported goods @ 10% / 3% (depending on product) introduced. Surcharge to be calculated on aggregate duties of customs (excluding IGST)
  - Goods which were hitherto exempt from E Cess and SHE Cess are exempted
- All imported goods exempted from levy of E Cess and SHE Cess
- Scope widened to cover offence or contravention outside India by any person
- Increase in rate of custom duty on number of products to promote 'Make-in- India' and incentivize domestic value addition
- The definition of "applicant" for advance ruling under customs widened

Direct Tax

- Corporate Tax rate of 25% extended to companies with turnover up to Rs 250 crore in financial year 2016-17
- E cess and SHE cess @ 30% replaced with HE cess @ 4%
- Long term capital gains exceeding Rs. 1 lakh to be taxed at 10% without indexation. However, all gains up to 31st January 2018 will be grandfathered.
- Standard deduction of Rs 40,000 allowed after taking away the transport, medical reimbursement for salaried tax payers
- Roll out of E-assessment across the country to almost eliminate person to person for greater efficiency and transparency
- Reporting period extended for furnishing of CbCR
- MAT not applicable to foreign company subject to presumptive taxation
- Increase in deduction limit for medical expenses for certain critical illnesses from INR 60,000 (in case of senior citizens) and from INR 80,000 (in case of very senior citizens) to INR 1 lakh for all senior citizens, under section 80DDB.
- Deduction of 30% on emoluments paid to new employees under Section 80-JJAA to be relaxed to 150 days for footwear and leather industry, to create more employment.
- ICDS and IT Act have been aligned
- Some relief on MAT front and brought forward losses granted to the cases covered under IBC
- Tax exemption for Farm Producer Companies having a turnover upto Rs. 100 crores

Budget Proposals Addressing

Implementation of GST

After waiting for several years, GST in India finally saw light of the day in July 2017 and became a reality. In the Budget proposals over the last few years, one of the eagerly awaited announcements was the implementation of GST. With implementation of GST becoming a reality in 2017-18, this surprise element had to vanish.
Without judging the GST implementation as successful or otherwise, the fact of implementation of GST per se has been a feat of the Government. While there have been several teething troubles and compliance issues especially in first couple of months after implementation, GST has in fact brought India closer to the target of making a single and homogenous national market.

Although GST was expected to be a simple law, the chain of amendments that have followed post implementation has in fact put its much trumpeted 'simple tax' brand in a bit of jeopardy. The rules framed under the GST law have seen around fifteen amendments in just seven months post implementation. The rates of tax on goods and services which were determined after thorough analysis got amended around five to six times after first implementation. This coupled with the shortcomings of the GSTN, the IT backbone of GST, did take away some credit from the Government.

However, at the same time, the Government has in past few month reflected its commitment to be business friendly by introduction of various new concepts and facilities like summary monthly returns, early processing of refund to exporters by delinking it to filing of returns, 0.1% tax on supplies to merchant exporters, etc.; which have gone a long way in easing out the immediate agonies that arose pursuant to 'not as expected' performance or impact of GST in first couple of months.

The GST Council has been a very active and fast responding machinery, paving way for quick resolution of procedural issues and ironing out inconsistencies in the GST law. At the end of each of its seven meetings post implementation of GST, the GST Council has brought about significant amendments in various Rules and notifications have been issued on immediate basis; departing from the hitherto practice of budget-to-budget cycle of key amendments in Indirect tax laws.

While a lot of buzz had been generated as regards significant overhaul of compliance machinery under the GST law and probably a re-look at some of the other aspects including but not limited to key definitions, credit mechanism, etc., the Government has, for the moment, put these discussions at rest by not making any statutory amendments in this regard.

Lastly, the e-waybill compliance system under the GST was to make its nation-wide debut today i.e. February 1, 2018, marking another significant step in the GST implementation process. However, the same has been deferred. Although perceived as highly cumbersome and demanding by various sectors, it remains to be seen whether the perceptions turns out to be a change resistance or in fact a perception of reality.
Along with its various accolades, GST now also probably gets the credit of being an Indirect tax law with the least number of amendments made in the Union Budget! And, that's a good one to have!

Key Initiatives of the Government of India

Budget 2018-2019 aims to implement the vision of Government of India which has been articulated by the Prime Minister Narendra Modi as ‘Minimum Government and Maximum Governance’. Taking inspiration from this vision, the Budget has introduced various proposals to support the key initiatives of the Government of India.

Ease of Doing Business

For the first time ever in last three years, India has made it to the list of top 100 countries in the World Bank Group's annual report released in the year of 2018 on ease of doing business wherein India has been given the 100th rank as compared to the 130 rank in last year’s ranking. This significant jump of 30 places from last year to this year has made the Government to take the ease of doing business a step further by stressing on ‘Ease of Living’ for the common men of this country, especially for those belonging to poor & middle class of the society. In line with the same, the Budget has presented certain proposals under the broad mission:

- Amendments made to Customs Act, 1962 in order to facilitate trade, smoothen dispute resolution, reduce litigation and improve compliance, by providing for pre-notice consultation, definite timelines for adjudication and deemed closure of cases if those timelines are not adhered to,etc.
- Amendment to the Income tax Act to notify a new scheme for assessment where the assessment will be done in electronic mode which will result in elimination of the personal meeting of the assessing officer with each assessee leading to greater efficiency and transparency.
- Identification of 372 specific business reform actions. All States have taken up these reforms and simplifications in a mission mode constructively competing with each other. Evaluation of performance under this Programme will now be based on user feedback

Make in India

Launched in September 2014, ‘Make in India’ has been one of the flagship campaigns of the Government of India, aimed at reviving the growth of the manufacturing sector in India. Various initiatives have been taken in the past to foster growth of this sector. In continuation of the same and with the objective of incentivizing the domestic value addition and ‘Make in India’, Budget has made the proposal to increase Customs Duty on certain items namely:-

- Mobile phones from 15% to 20%
- Some parts and accessories of mobile phones, raised to 15%
- Certain parts of TVs, raised to 15%
- Food processing – specific products, raised to 50%
- Specific Perfumes and toiletry preparations, raised to 20%
- Silk Fabrics from 10% to 20%
- Footwear from 10% to 20% and parts of footwear from 10% to 15%
- Automobile and automobile parts from 10-20% to 15-25%

- Diamond, precious stones and jewellery from 2.5% to 5%
- Furniture, Watches and clocks, Toys & Games from 10% to 20%

In addition to the above, Social Welfare Surcharge upto a maximum of 10% has been levied in place of Education and Secondary and Higher Education Cess on specified commodities.

Strengthen Agriculture

Agriculture has remained the primary focus of the Government of India for decades. One of the major agenda of the Government in this year's budget is welfare of farmers and strengthening the Agriculture sector. In order to achieve the said agenda, the Budget has made various proposals:

- Emphasis on generating higher incomes for farmers with a vision to double farmers' income by 2022.
- Decision to keep MSP for the all unannounced crops of kharif at least at one and half times of their production cost.
- NITI Ayog, in consultation with Central and State Governments, will put in place a full-proof mechanism to ensure that farmers will get adequate price for their produce.
- An Agri-Market Infrastructure Fund (APMC) with a corpus of INR. 2,000 crore will be set up for developing and upgrading agricultural marketing infrastructure in the 22,000 Grameen Agricultural Markets (GrAMs) and 585 APMCs.
- Proposal to launch a Re-structured National Bamboo Mission with an outlay of INR 1,290 crore to promote bamboo sector in a holistic manner.
- Proposal to launch an ''Operation Greens'' on the lines of ''Operation Flood'' to promote Farmer Producers Organizations (FPOs), agri-logistics, processing facilities and professional management with an allocation of INR 500 crores
- Proposal to allow 100 % deduction to companies registered as Farmer Producer Companies and having annual turnover up to INR100 crores in respect of their profit derived from such activities for a period of five years from financial year 2018-19.
- Government to take necessary measure to ensure that surplus solar power generated by farmers by installation of solar water pumps is purchased at remunerative rates by distribution companies or licencees

Health Care

In continuation of the flagship programme of 'Swach Bharat Mission', the Government of India with the vision of 'Swasth Bharat' has launched the programme named 'Ayushman Bharat'. This programme aims at making path breaking interventions to address health holistically, in primary, secondary and tertiary care system covering both prevention and health promotion. Under the said programme, the Budget has announced following initiatives:

- Proposal to launch a flagship National Health Protection Scheme to cover over INR 10 crore poor and vulnerable families (approximately INR 50 crore beneficiaries) providing coverage upto INR 5 lakh per family per year for secondary and tertiary care hospitalization. This will be the world's largest government funded health care programme.

- The National Health Policy, 2017 has envisioned Health and Wellness Centres as the foundation of India's health system. These centres will provide comprehensive health care, including for noncommunicable diseases and maternal and child health services. These centres will also provide free essential drugs and diagnostic services
- Specific allocation of INR 600 crore to provide nutritional support to all TB patients at the rate of INR 500 per month for the duration of their treatment.
- Proposal to set up 24 new Government Medical Colleges and Hospitals by upgrading existing district hospitals in the country to ensure that there is at least 1 Medical College for every 3 Parliamentary Constituencies and at least 1 Government Medical College in each State of the country
- Proposal to allow a standard deduction of INR 40,000/- in lieu of the present exemption in respect of transport allowance and reimbursement of miscellaneous medical expenses
- All senior citizens will now be able to claim benefit of deduction up to INR 50,000/- per annum in respect of any health insurance premium and/or any general medical expenditure incurred
- Raising the limit of deduction for medical expenditure in respect of certain critical illness from, INR 60,000/- in case of senior citizens and from INR 80,000/- in case of very senior citizens, to INR 1 lakh in respect of all senior citizens, under section 80DDB.

Digital India

The Digital India Programme launched in July,2015 is a flagship programme of the Government of India with a vision to transform India into a digitally empowered society and knowledge economy. In order to promote the said initiative of the Government of India, the Budget has made certain proposals under the broad mission of making each and every sector digital friendly:

- Increase the digital intensity in education and move gradually from ‘‘black board’’ to ‘‘digital board’’. Technology will also be used to upgrade the skills of teachers through the recently launched digital portal ‘‘DIKSHA’
- A Non Tax Receipt Portal (NTRP) to provide one stop services for depositing fees, fines and other non-tax dues into Government account.
- Introduction of web-based Government Integrated Financial Management Information System (GIFMIS), administered by Controller General of Accounts, for budgeting, accounting, expenditure and cash management for more effective fiscal management of Government.
- Project ‘e-Vidhan’ to digitize and make the functioning of all State Legislatures paperless
  E-Courts, to bring about universal computerization of all Districts and Subordinate Courts, use of cloud computing and availability of e-services like e-filing and e-payments as well.
- A National Judicial Data Grid to provide an online platform for information relating to judicial proceedings and decisions from over 16,000 computerized Courts and Subordinate Courts in the country. An e-Courts Services App has also been launched to provide litigant centric services.
- e-Panchayats platform to provide a suite of core common applications to address various aspects of panchayats functioning from internal core functions of planning, budgeting, implementation, accounting, monitoring and social audit to delivery of services like issue of certificates, licenses etc.

Indirect Taxes

Goods and Service Tax

Miscellaneous

Change in the name of Board

The name of the central board is proposed to be changed from 'Central Board of Excise and Customs' to 'Central Board of Indirect Taxes and Customs'

Service Tax

Exemptions

Retrospective Exemptions

- Services of life insurance by the Naval Group Insurance Fund to personnel of coastal guard under the Group Insurance Schemes of the Central Government are sought to be retrospectively exempted right from the date from when the services of life insurance became taxable i.e. September 10, 2004. Any service tax already collected can be sought as a refund by way of an application to be made within six months from the day on which the Finance Bill, 2018 receives assent.
- Services of Goods and Service Tax Network to the Central Government, State Government, or the Union Territory administration are sought to be retrospectively exempted from March 28, 2013 till June 30, 2017. Any service tax already collected can be sought as a refund by way of an application to be made within six months from the day on which the Finance Bill, 2018 receives assent.
- Consideration paid to the Government in the form of Government's share of profit petroleum in respect of services provided or agreed to be provided by the Government by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, is proposed to be exempted from service tax for the period commencing from April 1, 2016 and ending with the June 30, 2017. Any service tax already collected can be sought as a refund by way of an application to be made within six months from the day on which the Finance Bill, 2018 receives assent.

Excise

Legislative Changes

- Additional Duty of Excise to be replaced by Road and Infrastructure Cess
- The Additional Duty of Excise as leviable under the Finance (No. 2) Act, 1998 (21 of 1998)" has been replaced by "Additional Duty of Excise (Road and Infrastructure Cess) leviable under clause 110 of the Finance Bill, 2018 (4 of 2018)".
- Rationalization of Exemption from Additional Duty of Excise
- The exemption from Additional Duty of Excise as extended to the following listed goods has been rescinded, these goods are however subjected to exemption from the Additional Duty of Excise (Road and Infrastructure Cess) as leviable under clause 110 of the Finance Bill, 2018 (4 of 2018):
  - 5% ethanol blended petrol conforming to Bureau of Indian Standards specification 2796 consisting, by volume, of 95% Motor Spirit, (commonly known as petrol), on which the Excise Duty, Additional Excise Duty and Special Additional Excise Duty has been ("appropriate duties of excise") paid and, of 5% ethanol on which the Central tax, State tax, Union Territory tax or Integrated tax ("appropriate GST") has been paid;
  - 10% ethanol blended petrol conforming to Bureau of Indian Standards specification 2796 consisting, by volume, of 90% Motor Spirit, (commonly known as petrol), on which the appropriate duties of excise have been paid and, of 10% ethanol on which the appropriate GST has been paid; and
  - High-Speed Diesel Oil blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels, up to 20%, by volume, that is a blend, consisting 80% or more of high speed diesel oil, on which the appropriate duties of excise have been paid and up to 20% bio-diesel, on which appropriate GST has been paid.
- Exemption to goods cleared from Numaligarh Refinery, Bongaigaon Refineries and Petrochemicals Limited, Indian Oil Corporation, Guwahati, or Assam Oil Division and Indian Oil Corporation, Digboi is being replaced as tabulated below

ERSTWHILE EXEMPTION BENEFIT	REVISED EXEMPTION BENEFIT
50% of Duty of Excise as levied under First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and	50% of Excise Duty as levied under the Fourth Schedule to the Central Excise Act, 1944 (1 of 1944)
50% of Special duty of excise under Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)	50% of Additional Duty of Excise (Road and Infrastructure Cess) levied under clause 110 of the Finance Bill, 2018 (4 of 2018)

ERSTWHILE EXEMPTION BENEFIT	REVISED EXEMPTION BENEFIT
50% of Additional Duty of Excise as levied under sub-section (1) of section 111 of the Finance Act, 1998 (21 of 1998) read with the Second Schedule to the said Act and	50% of Special Additional Excise Duty as levied under Sub-section (1) of section 147 of the Finance Act, 2002 (20 of 2002) read with the Eighth Schedule to the said Finance Act and Notification No. 28/2002-Central Excise, dated May 13, 2002
50% of Additional Duty of Excise as levied under sub-section (1) of section 133 of the Finance Act, 1999 (27 of 1999) read with the Second Schedule to the said Act	
50% of Special Additional Excise Duty as levied under Sub-section (1) of section 147 of the Finance Act, 2002 (20 of 2002) read with the Eighth Schedule to the said Finance Act and Notification No. 28/2002-Central Excise, dated May 13, 2002	

Exemption from Additional Duty of Excise

- Complete exemption from Additional Duty of Excise is extended to Motor Spirit commonly known as petrol, falling under heading 2710 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and High-Speed Diesel Oil, falling under heading 2710 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

Tariff Changes

Changes in Rate of Central Excise Duty

Sr. No	CETH	Description of Goods	Existing Rate (INR/Ltr.)	Revised Rate (INR/Ltr.)
1	2710	Motor Spirit commonly known as petrol- intended for sale without a brand name; other than those specified at (i)	8.48 9.66	4.48 5.66
2	27101930	High Speed Diesel- intended for sale without a brand name; other than those specified at (i)	8.48 9.66	6.33 8.69

Customs

Legislative Changes

Definitions

- The terms ‘import manifest’ and ‘export manifest’ wherever used in the Customs Act are proposed to be amended to include within the ambits of these terms Arrival Manifest and Departure Manifest, respectively, so as to expand the scope of term manifest and include all goods carried by conveyances, which goods are required to be delivered before their arrival and departure.
- The definition of the term ‘assessment’ in Section 2(2) in the Customs Act is proposed to be amended to cover cases of determination of duty, tax, cess or any other sum payable under the Customs Act.
- The definition of ‘Indian Customs Waters’ in Section 2(28) is proposed to be amended to exclude contiguous zone of India under Section 5 and include Exclusive Economic Zone under Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976.

Advance Rulings

- For Advance Ruling purposes, the definition of ‘applicant’ in Section 28E(c) is proposed to be aligned to the Trade Facilitation Agreement and broad based to include importers, exporters and other persons seeking justiciable cause before the Authority.
- The definition of ‘Advance Ruling’ under Section 28E(b) is proposed to be extended beyond the aspect of determination of duty and made applicable for instances specifically defined under Section 28H.
- The existing Authority for Advance Ruling for Customs Act is proposed to be designated as “Appellate Authority” by amending Section 28E and a new Authority with the name of ‘Customs Authority for Advance Rulings’ is proposed to be constituted to provide advance rulings specifically for the Customs Act by inserting Section 28EA. However, till the said authority is appointed, the existing Authority for Advance Rulings under the IT Act is proposed to be continued, to provide Advance Rulings under the Customs Act.
- Section 28F is proposed to be amended to enable the transfer of cases from existing Advance Rulings Authority to newly constituted Customs Authority for Advance Rulings, as and when appointed.
- Clause (f) in Section 28H(2) is proposed to be inserted to empower the Central Government to notify cases other than those specified in that Section and where Advance Ruling can be sought.
- Sub-section (5) is proposed to be inserted in Section 28H to extend a facility to an applicant where he may be represented by a duly authorized person who is a resident in India.
- The definition of ‘non-resident’ given under the IT Act is proposed to be made applicable for the purposes of a non-resident applicant seeking Advance Ruling.
- The time frame prescribed for pronouncement of an Advance Ruling is proposed to be reduced from 6 months to 3 months.

- An amendment is proposed in Section 28K by virtue of which it will stand clarified that in situations where any Advance Ruling becomes void by virtue of misrepresentation or suppression of facts, for the purpose of calculating time limit for issuance of notice of recovery, the period during which the matter has remained with the Advance Ruling Authority shall be excluded.
- Consequent to the proposed introduction of Appellant Authority for Advance Ruling under the Customs Act, the following changes have been made in the relevant provisions for Advance Ruling:
  - A new Section 28KA is proposed to be inserted to introduce the concept of appeal in respect of Advance Ruling under the Customs Act. An appeal against the order passed by Customs Authority for Advance Rulings can be filed by the Applicant or the officer authorised by the CBEC. This said Section will come into force only after appointment of Customs Authority for Advance Rulings under Section 28E.
  - Section 28L which provides for the "Power of Authority" in relation to discovery and inspection, enforcing the attendance of any person, examining him on oath etc. is proposed to be amended to substitute the term 'Authority' with 'Authority or Appellate Authority' so as to confer the powers of a civil court upon both the Authority as well as the Appellate Authority.
  - Section 28M is proposed to be amended to provide that the Appellate Authority have power to regulate its own procedure for the purpose of conducting its proceedings.

ELP Comment

The scope and scheme of Advance Ruling under the Customs Act is expanded, and aligned with GST Law and so as to provide for appellate mechanism. The scope of advance ruling is also expanded by broadening issues that can be ruled upon as well as persons that may approach the Customs Authority for Advance Rulings.

Other Amendments

- Section 1 is proposed to be amended to extend the scope of the Customs Act to any offence or contravention which is committed outside India.

ELP Comment

The Tribunal in Shafeek P.K. [2015 (325) E.L.T. 199 (Tri. – Bang.)] and C.K. Kunhammed v. Collector [1992 (62) E.L.T. 146 (Tribunal)], held that the Customs Act would not apply to offences and infractions outside India, and the Indian Customs Department would have no jurisdiction over persons outside India. The proposed amendment renders ineffective these judgements.

- Section 2(6) is proposed to be amended to rename the 'Central Board of Excise and Customs' as 'Central Board of Indirect Taxes and Customs'.
- Sub-Section (3) is proposed to be inserted in Section 11 to provide that the regulatory requirements relating to import or export of goods or class of goods or clearance thereof under any other law shall be required to be notified under the Customs Act.
- The scope of verification by the proper officer is proposed to be broadened by amending Section 17(2) to include all aspects of declarations made in the bill of entry or shipping bill in addition to self-assessment. A proviso is proposed to Section 17(2) whereby risk-based selection of self-assessed bill of entry or Shipping Bill through appropriate selection criteria has been provided legal sanction.
- The scope of verification of self-assessment is proposed to be extended by amending Section 17(5) to go beyond valuation, classification and exemption or concessions of duty availed consequent to any notification.
- Sub-Section (1A) is proposed to be inserted to Section 18 to empower the CBEC to specify by regulations the time and manner of finalisation of provisional assessment.
- The scope of provisional assessment is proposed to be widened to cover export consignments.
- Central Government is empowered to exempt goods, imported for repair, further processing or manufacture, from payment of whole or part of the duty subject to prescribed conditions by proposing to insert Section 25A.
- Central Government is empowered to exempt goods re-imported after repair, further processing or manufacture from payment of whole or part of the duty subject to prescribed conditions by proposing to insert Section 25B.
- Section 28(1) is proposed to be inserted whereby cases not involving collusion, suppression, etc. would henceforth be dealt with by way of pre-notice consultation before issuance of demand notice. The procedure is subject to notification.
- Sub-section (7A) is proposed to be inserted to Section 28 to give power to the assessing office to issue supplementary notice which shall have the same force as the original demand notice.
- A definite time frame for adjudication of demand notices ranging from six months to one year depending upon charges of collusion, suppression, etc., is proposed by inserting sub-Section (9A) to Section 28 and by excluding the following time period: (a) pendency of appeal before Tribunal or Court, (b) interim stay by Tribunal or Court, (c) specific direction by Board for keeping the similar matter pending, and (d) application made to Settlement Commission. Further, the officer senior to the adjudicating authority is proposed to be empowered by adding proviso to Section 28(9) so as to extend the afore-said time periods by 6 months/ 1 year, respectively. It is also proposed that the failure to complete the assessment even within such extended period would lead to the lapse of assessment proceedings as per Section.
- Sub-Section (10A) is proposed to be inserted to Section 28 whereby in cases where the departmental appeal against an erroneous refund is held valid, separate demand notice for recovery of excess refund needn't be issued, and instead, such amount along with interest may be recovered as sum due to the Government.
- Sub-Section (10B) is proposed to be inserted to Section 28 whereby in cases where the charge of collusion, suppression of fact, etc. couldn't be proved by the department in any proceedings, the notice issued using the extended period basis shall be deemed to converted into the notice issued under the normal provisions which effectively sustains the demand covered under the normal period.

ELP Comment

This provision saves the demand from being rendered unsustainable where the allegation/ charges of fraud, etc. come unproven. This provision is in sync with the provision of the GST Law.

- Explanation – 4 is proposed to be inserted to Section 28 whereby it is provided that demand notices issued after 14.05.2015 but before receiving assent of the President to the Finance Bill, 2018 shall continue to be governed by the provisions existed before such assent.
- Section 30(1) is proposed to be amended so as to provide that the person-in-charge of a conveyance is required to give the details of exported goods in addition to the details of the imported goods at the time of delivering the import manifest or the import report as the case may be. Further, the said sub-Section, also seeks to provide the regulations for the manner of delivery of import manifest/report by substituting the words 'the prescribed form' with the words 'such form and manner as may be prescribed'.
- Section 41(1) of the Customs Act is proposed to be amended so as to provide that the person-in-charge of a conveyance is required to give the details of imported goods in addition to the details of exported goods at the time of delivering the export manifest or the export report as the case may be. Further, the said sub-Section, also seeks to provide the regulation for the manner of delivery of export manifest/report by substituting the words 'the prescribed form' with the words 'such form and manner as may be prescribed'. The penalty not exceeding INR 50,000 is also proposed to be provided for late filing of manifest/report.
- Section 45 is proposed to be amended so as to provide for clearance of goods in the custody of the proper officer by other ways as may be prescribed in addition to existing system of clearance. This amendment is proposed to be made consequent to the amendment in Section 47, 51 and 60 of the Customs Act.
- In Section 46(1), the words 'on the customs automated system' are proposed to be inserted after the word 'electronically' with a view to elaborate the manner of submission of bill of entry electronically in respect of entry of goods on importation. Further, the words 'in the prescribed form' are proposed to be substituted with the words 'in such form and manner as may be prescribed'. With the view to encourage voluntary compliance, appropriate changes are proposed to be made in the proviso to sub-Section (3) to clarify the timing for prior presentation of bill of entry and sub-Section (4) to include requirement of submission of such other documents, as may be provided by regulations, in addition to invoice. Sub-Section (4A) is proposed to be inserted in Section 46 so as to provide for observance of the accuracy, authenticity, validity of the bill of entry filed by the importer and compliance with the restrictions or the prohibitions under the Customs Act or any other law for the time being in force.
- In Section 50(1), the words 'on the customs automated system' are proposed to be inserted after the word 'electronically' with a view to elaborate the manner of submission of shipping bill or bill of export electronically in respect of entry of goods on exportation. Further, the words 'in the prescribed form' are proposed to be substituted with the words 'in such form and manner as may be prescribed'. Subsection (3) is proposed to be inserted to Section 50 so as to provide for observance of the accuracy, authenticity, validity of the shipping bill or bill of export filed by the exporter and compliance with the restrictions or the prohibitions under the Customs Act or any other law for the time being in force.

- A new Chapter VIIA namely “Payments through Electronic Cash Ledger” with governing provisions under Section 51A is proposed to be inserted to have provisions for payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. Regulations for this are proposed to be issued. This Section provides for deposit of advance with the Government instead of making transaction wise payment as is being done at present.

ELP Comment

This provision aligns the process with that of GST Law, and in a manner, enhances ease of doing business.

- Section 54 is proposed to be amended to empower the CBEC to make regulations providing the manner of presenting a bill of transhipment and declaration for transhipment apart from providing the prescribed form for these documents.
- Amendment proposed in Section 69(1)(c) to include the facility of issuance of an order electronically through customs automated system (on the basis of risk evaluation), for clearance of warehoused goods for exports by a proper officer.
- Section 74 and 75 have proposed to amend the words and figures “clause (a) of Section 84” in place of “Section 82” to include drawback on export / re-export of goods effected through post.
  Nomenclature of Chapter XI, “Special provisions regarding baggage, goods imported or exported by post, and stores” has been amended to include entry for courier.
- Section 83 and 84 are proposed to be amended to apply the provisions of rate of duty, tariff valuation and regulations regarding goods imported or exported by courier, as currently applicable to importation or exportation of goods by post only.
- Section 99A is proposed to be inserted in a new chapter, “XIIA” for incorporating the provisions of audit of assessment of imported or exported goods or of an auditee by a proper officer either in his office or an office of the auditee as may be prescribed. It further prescribes the meaning of the term “auditee”.
- Proposal to include a new Section 109A allowing the proper officer or any other officer authorised by him to undertake controlled delivery of any consignment of goods (as may be prescribed) to:
  - Any destination in India or
  - A foreign country, in consultation with the competent authority of such country to which such consignment is destined.
- “Controlled delivery” has been defined to mean the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.
- Proviso to Section 110(2) is proposed to be substituted to allow the Principal Commissioner or Commissioner to extend the period of detention of goods to a further period not exceeding six months provided the reason of the said extension is recorded in writing and inform the person from whom such goods were seized before expiry of the extended period. Further, the extended period of six months shall not apply in case seized goods are released under provisional release order under Section 110A of Customs Act.

- Section 122 is sought to be amended to empower the CBEC to fix monetary limits for adjudication of confiscations and penalties by an officer below the rank of Joint Commissioner. CBEC shall fix such monetary limits by issuance of Notification. Earlier the monetary limit for Assistant Commissioner of Customs or Deputy Commissioner of Customs was capped at Rupees five lakhs whereas a Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs could adjudicate confiscations and penalties for the goods valuing upto Rupees fifty thousand.
- A proviso is proposed to be inserted to Section 124 to enable issuance of supplementary show cause notice under the circumstances and in manner to be prescribed
- The provisions of 'option to pay fine in lieu of confiscation' under Section 125 is being amended to provide a time limit of 120 days to exercise the option unless an appeal against the adjudication for confiscation itself is pending before appellate authorities. Failing to exercise the option within prescribed time limitation would make the option itself void leading to confiscation. Where the order of adjudication is passed prior to date on which Finance Bill, 2018 receives its assent and no appeal is filed against it, the limitation of 120 days shall commence on the date on which Finance Bill, 2018 receives its assent. A proviso is also sought to be inserted to make the entire Section 125 inapplicable if the adjudicating proceedings are concluded owing to due payments being made by the Noticee.
- Section 128A is proposed to be amended to empower Commissioner (Appeals) to remand the matters to original adjudicating authority if the Adjudication Order is passed not in observance of principles of natural justice. If an Order is not passed after re-assessment under Section 17 or if an Order under Section 27 is passed crediting the amount to the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944 without recording any finding on the evidence produced by the applicant, the Commissioner (Appeals) may remand the matter to original adjudicating authority.
- Insertion of Section 143AA to empower the CBEC to prescribe separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods for: (a) transparency in import and export documentation and procedure; (b) expeditious clearance or release of goods entered for import or export; (c) reduction in the transaction cost of clearance of importing or exporting goods; (d) maintenance of balance between customs control and facilitation of legitimate trade.
- Proposed insertion of Section 151B to authorize the Central Government to enter into an agreement with other countries on reciprocal basis for facilitation of trade, enforcing the provisions of Customs Act and exchange of information. The information received through such arrangement could be used as an evidence in investigation and proceedings under the Customs Act.
- Section 153 is proposed to be entirely substituted to modify the mode of service of order, decision, etc. The amended provisions would recognise tendering directly to addressee, mailing through registered post or speed post or courier with acknowledgement due, sending an e-mail, publishing in newspaper and affixing at a conspicuous place (a notice) at the last known place of business as valid modes of delivery.
- Section 157 is being amended to additionally empower the CBEC to make regulations for: circumstances under which, and the manner of issuing supplementary notice; form and manner in which an application for advance ruling or appeal shall be made, and the procedure for the authority, under Chapter VB; manner of clearance or removal of imported or export goods; documents to be furnished in relation to imported goods; conditions, restrictions and the manner for deposits in electronic cash ledgers, the utilization and refund therefrom and the manner of maintaining such ledger; manner of conducting audit; goods for controlled delivery and the manner thereof; measures and the simplified or different procedures or documentation for a class of importers or exporters or categories of goods or on the basis of the modes of transport of goods.

Customs Automated System

The provision of passing of orders by the proper officer through the Customs Automated System is proposed to be inserted in addition to the existing system of clearance in respect of the following Sections:

(i) Section 47(1) - Order for clearance of goods for home consumption

(ii) Section 51(1) - Order for clearance of goods for exportation

(iii) Section 60(1) - Order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse (referred to as Warehousing Order)

(iv) Section 68 - Order for clearance of warehoused goods for home consumption

(v) Section 69(1) - Order for clearance of warehoused goods for export

Tariff Changes

Changes in Rate of Customs Duty (w.e.f. 02.02.2018)

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1	0801 31 00	Cashew nuts in shell [Raw cashew]Institutes of Management.	5	2.5
2	1508, 1509, 1510, 1512, 1513, 1515	Crude edible vegetable oils like Ground nut oil, Olive oil, Cotton seed oil, Safflower seed oil, Saffola oil, Coconut oil, Palm Kernel/Babassu oil, Linseed oil, Maize corn oil, Castor oil, Sesame oil, other fixed vegetable fats and oils	12.5	30
3	1508, 1509, 1510 1512, 1513, 1515 1516 20, 1517 10 21, 1517 90 10, 1518 00 11, 1518 00 21, 1518 00 31	Refined edible vegetable oils, like Ground nut oil, Olive oil, Cotton seed oil, Safflower seed oil, Saffola oil, Coconut oil, Palm Kernel/Babassu oil, Linseed oil, Maize corn oil, Castor oil, Sesame oil, other fixed vegetable fats and oils, edible margarine of vegeta-ble origin, Sal fat; specified goods of heading 1518	20	35
4	2009 21 00 to 2009 90 00	Fruit juices and vegetable juices including cranberry juice	30	50
5	2009 11 00 2009 12 00 2009 19 00	Orange juice	30	35
6	2009 81 00 2009 90 00	Cranberry juice	10	50

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
7	2106 90	Miscellaneous Food preparations (other than soya protein)	30	50
8	3303	Perfumes and toilet papers	10	20
9	3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations	10	20
10	3305	Preparations for use on the hair	10	20
11	3406	Preparations for oral or dental hygiene, including denture fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages	10	20
12	4011 20 10	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included, prepared room deodorizers, whether or not perfumed or having disinfectant properties	10	20
13	3406	Candles, tapers and the like	10	25
14	4011 20 10	Truck and bus radial tyres	10	15
15	4823 90 90	Kites	10	20
16	5007	Woven fabrics of silk or of silk waste	10	20

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
17	6401	Waterproof footwear with outer soles and uppers of rubber or of plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes	10	20
18	6402	Other footwear with outer soles and uppers of rubber or plastics	10	20
19	6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather	10	20
20	6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials	10	20
21	6405	Other footwear	10	20
22	6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof	10	15
23	6815 91 00	Other articles of stone containing magnesite, dolomite or chromite	10	7.5
24	6901	Bricks, blocks, tiles and other ceramic goods of siliceous fossil meals or of similar siliceous earths	10	7.5

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
25	6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil meals or similar siliceous earths	5	7.5
26	6903	Other refractory ceramic goods	5	7.5
27	70	Solar tempered glass or solar tempered [anti-reflective coated] glass for manufacture of solar cells /panels/modules	5	NIL
28	70	Preform of silica for use in the manufacture of telecommunication grade optical fibres or optical fibre cables	NIL	5
29	71	Cut and polished colored gemstones	2.5	5
30	71	Diamonds including lab grown diamonds-semi processed, half-cut or broken; non-industrial diamonds including lab-grown diamonds (other than rough diamonds), including cut and polished diamonds	2.5	5
31	7117	Imitation Jewellery	15	20
32	8483 40 00, 8466 93 90, 8537 10 00	Ball screws, linear motion guides, CNC systems for manufacture of all types of CNC machine tools falling under headings 8456 to 8463	7.5	2.5

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
33	8504 90 90/3926 90 99	Printed Circuit Board Assembly (PCBA) of charger/adapter and moulded plastics of charger/adapter of cellular mobile phones	NIL	10
34	Any Chapter	Inputs or parts for manufacture of: a) PCBA, or b) moulded plastics of charger/adapter of cellular mobile phones of cellular mobile phones	Applicable rate	NIL
35	8517 12	Cellular mobile phones	15	20
36	8517 62 90	Smart watches / wearable devices	10	20
37	8529 10 99 8529 90 90	LCD/LED/OLED panels and other parts of LCD/LED/OLED TVs	7.5/10	15
38	8529/4016	12 specified parts for manufacture of LCD/LED TV panels	NIL	10
39	8702, 8703, 8704, 8711	CKD imports of motor vehicles, motor cars, motor cycles	10	15
40	8702, 8704	CBU imports of motor vehicles	20	25
41	9004 10	Sunglasses	10	20
42	9101, 9102	Wrist watches, pocket watches and other watches, including stop watches	10	20

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
43	9103	Clocks with watch movements	10	20
44	9105	Other clocks, including alarm clocks	10	20
45	9401	Seats and parts of seats [other than aircraft seats and their parts]	10	20
46	9403	Other furniture and parts	10	20
47	9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered	10	20
48	9405	Lamps and lighting fitting, illuminated signs, illuminated name plates and the like [except solar lanterns or solar lamps]	10	20
49	9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; puzzles of all kinds	10	20
50	9504	Video game consoles and machines, articles for funfair, table or parlour games and automatic bowling alley equipment	10	20

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
51	9505	Festive, carnival or other entertainment articles	10	20
52	9506 [except 9506 91]	Articles and equipment for sports or outdoor games, swimming pools and paddling pools [other than articles and equipment for general physical exercise, gymnastics or athletics]	10	20
53	9507	Fishing rods, fishing-hooks and other line fishing tackle; fish landing nets, butter fly nets and similar nets; decoy birds and similar hunting or shooting requisites	10	20
54	9508	Roundabouts, swings, shooting galleries and other fairground amusements; travelling circuses, traveling menageries and travelling theatres	10	20
55	9611	Date, sealing or numbering stamps, and the like	10	20
56	9613	Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks	10	20
57	9616	Scent sprays and similar toilet sprays, and mounts and heads therefor; powder-puffs and pads for the application of cosmetic or toilet preparations	10	20

Sr. No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
58	3919 90 90, 3920 99 99, 3926 90 91, 3926 90 99, 4016 99 90, 7318 15 00, 7326 90 99, 8504, 8506, 8507, 8517 70 90, 8518, 8538 90 00, 8544 19, 8544 42, 8544 49	Specified parts and accessories including lithium ion battery of cellular mobile phones	7.5/10	15
59	8407, 8408, 8409, 8483 10 91, 8483 10 92, 8511, 8708, 8714 10	Specified parts/accessories of motor vehicles, motor cars, motor cycles	7.5/10	15
60	Any Chapter	Raw materials, parts and accessories for the manufacture of Cochlear implants	2.5	NIL

Sr. No	Purpose of amendment in Custom Duty	Relevant serial number
1	Reduction in Custom Duty on inputs and Raw materials to reduce cost	1, 27 and 32
2	Changes in Custom Duty to address the problem of duty inversions in certain sectors	28
3	Changes in Custom Duty to provide adequate protection to Domestic industry	4 to 22, 29 to 31, 33 to 60
4	Rationalization measures	2, 3, 23 to 26

Other Amendments

Amendment in CTA

- Sub-Section 8A and 10A have been inserted in Section 3 of CTA to determine the value of goods for the purpose of calculating the IGST and GST Compensation Cess respectively when the goods deposited in a warehouse are sold to any person before clearance for home consumption.
- Consequently, amendments have been made in sub-Section 7 and sub-Section 9 of Section 3 of CTA (which levies IGST and GST Compensation Cess respectively) to make a reference to sub-Section 8A and sub-Section 10A for the purposes of valuation in cases where goods deposited in the warehouse are sold before clearance for home consumption.

Amendments not affecting rates of duty

- The rate of BCD on Lithium-ion batteries under CTH 8507 60 00 has been increased from 10% to 20%. However, in order to maintain the effective rate on such batteries at 10%, the government has simultaneously inserted S.No. 16 in the exemption notification no. 57/2017 – Customs dated 30th June, 2017. By virtue of this notification, the amount of BCD calculated in excess of 10% for such batteries (except those of cellular mobile phones) will be exempt. Thus, effective rate of BCD on Lithium-ion batteries (except those of cellular mobile phones) will remain unchanged at 10%.
- However, for Lithium-ion batteries of cellular mobile phones, BCD in excess of 15% is exempted by way of insertion of S.no. 17 in the exemption notification no. 57/2017 – Customs dated 30th June, 2017. Thus, effective rate of BCD will be 15%.
- The rate of BCD on medical devices under CTH 9018, 9019, 9020, 9021 and 9022 has been increased from 7.5% to 10%. However, in order to maintain the effective rate on such devices at 7.5%, the Government has simultaneously inserted S.No. 563A in the exemption Notification No. 50/2017 dated 30th June, 2017. By virtue of this, BCD on the items covered in the aforesaid CTHs (barring items covered in CTH 9018 32 30, 9018 50 20, 9018 90 21, 9018 90 24, 9018 90 43, 9018 90 95, 9018 90 96, 9018 90 97, 9018 90 98, 9019 10 20, 9022 90 10 or 9022 90 30) in excess of 7.5% will be exempt. Thus, effectively the rate will remain unchanged at 7.5%.

Technical amendments not affecting rates of duty

- The tariff item 0713 31 00 has been bifurcated to create separate tariff items each for Moong Dal and Urad Dal. The new tariff item is as under::

Tariff Item (1)	Description of goods (2)	Unit (3)	Standard Rate (4)	Preferential Rate (5)
0713 31	-- Beans of the species Vigna mungo (L.) Hepper or Vigna radiate (L.) Wilczek			
0713 31	--- Beans of the species Vigna mungo (L.) Hepper	KG	30%	20%
0713 31 90	--- Beans of the species Vigna radiata (L.) Wilczek	KG	30%	20%

- The tariff item 0904 22 12 in chapter 9 which covers chilly seeds of genus capsicum has been omitted and a new tariff item 1209 91 70 in chapter 12 pertaining to it has been created. Further, the rate of BCD has been reduced from 70% to 10%.
- In the description of goods to tariff item 2917 39 20 of chapter 29, the words "Dioctyl phthalate" have been substituted by the words " Dioctyl isophthalate and dioctyl terephthalate".

Abolition of Education Cess and Secondary and Higher Education Cess on imported goods and levy of Social Welfare Surcharge

The Government has abolished Education Cess and Secondary and Higher Education Cess on imported goods and introduced instead Social Welfare Surcharge. The Social Welfare Surcharge shall be calculated at the rate of 10% on the aggregate of duties of customs. The purpose of levying Social Welfare Surcharge includes financing of education, housing and social security. However, on certain items the Social Welfare Surcharge would be calculated at the rate of 3% on aggregate duties of customs. The same has been captured as under:

Sr. No.	CTH	Description	Rate of Social Welfare Surcharge
1	2710	Motor spirit commonly known as petrol and high speed diesel oil	3% of aggregate duties of customs
2	7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured form, or in powder form	3% of aggregate duties of customs
3	7108	Gold (including gold plated with platinum), unwrought or in semi-manufactured form, or in powder form	3% of aggregate duties of customs

ELP Comment

Social Welfare Surcharge will not be levied on IGST component of imported goods die to Notification No. 13/ 2018 – Customs, dated 2nd February, 2018

Introduction of Road and Infrastructure Cess

The Road Cess on imported motor spirit commonly known as petrol and high speed diesel oil (CTH 2710) has been abolished but an additional duty of customs namely Road and Infrastructure Cess has been levied on such items at the rate of Rs. 8 per litre.

Also, additional customs duty which is levied in lieu of basic excise duty on items under CTH 2710 have been reduced. The reduced basic rate of duty is:

Sr. No	CTH	Description	Existing Rate (%)	Revised Rate (%)
1	2710	(i) Motor spirit commonly known as petrol	RS. 6.48 PER LITRE	Rs. 4.48 per litre
2	2710	(ii) High speed diesel oil	RS. 8.33 PER LITRE	Rs. 6.33 per litre

Amendment in the Second Schedule to CTA

- The Government has inserted Note 4 in the Second Schedule (Export Tariff) to CTA clarifying therein that in respect of goods which are not covered by the schedule, rate of export duty shall be NIL.
- The rate of duty on export of electrodes of a kind used for furnaces under CTH 8545 11 00 has been increased from Nil to 20%. However, in order to maintain the effective rate on such goods at Nil, the Government has simultaneously inserted S.No. 62A in the exemption notification no. 27/2011 – Customs dated 1st March, 2011. By virtue of this notification, the amount of export duty in excess of Nil rate for electrodes of a kind used for furnaces will be exempt. Thus, effective rate of export duty on such goods will remain Nil.

Direct Tax

Income Tax Rates

For Individuals (less than 60 years of age), HUFs, AOPs, BOIs and artificial juridical person

Existing and Proposed

Income (INR)	Rate (percent)
0 -2,50,000	NIL
2,50,001 - 5,00,000	5
5,00,001 - 10,00,000	20
10,00,001 and above	30

<table>
<tr><th>Sr. No</th><th>Particulars</th><th>Existing</th><th>Proposed</th></tr>
<tr><td>1</td><td>Basic exemption limits for senior citizens</td><td colspan="2">INR 3 lakhs for individuals, resident of India, of the age of 60 years or more but less than 80 years

INR 5 lakhs for individuals, resident of India, of the age of 80 years or more</td></tr>
<tr><td>2</td><td>Surcharge</td><td colspan="2">10% to be levied if the total income is between INR 50 lakhs to INR 1 crore;

15% is levied if the total income exceeds INR 1 crore</td></tr>
<tr><td>3</td><td>Cess - Education cessand Secondary Education cess (now proposed to be known as Health and Education cess)</td><td>3%</td><td>4%</td></tr>
</table>

4	AMT	19.06% (including cess) - If adjusted, total income exceeds INR 20 lakhs but less than INR 50 lakhs 20.96% (including cess) - If adjusted, total income is between INR 50 lakhs to INR 1 crore 21.91% (including cess) - If adjusted, total income exceeds INR 1 crore	19.24% (including cess) - If adjusted, total income exceeds INR 20 lakhs but less than INR 50 lakhs 21.16% (including cess) - If adjusted, total income is between INR 50 lakhs to INR 1 crore 22.13% (including cess) - If adjusted, total income exceeds INR 1 crore

For Companies, Firms, LLP

Sr. No	Description	Description			Description		
A	Domestic Companies	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore
	Regular tax	30.90	33.063	34.608	31.2	33.38	34.94
1	Regular tax for companies whose total turnover or gross receipts in previous year 2016-17 does not exceed INR 250 crores	-	-	-	26.00	27.82	29.12
	Regular tax for companies covered under Section 115BA	25.75	27.55	28.84	26.00	27.82	29.12

2	MAT under Section 115JB (Rate to be applied on book profits)	19.06	20.39	21.34	19.24	20.59	21.55
3	BDT under Section 115QA	23.072 (Includes surcharge of 12% and cess of 3%)			23.296 (Includes surcharge of 12% and cess of 4%)		
4	DDT under Section 115-O (without grossing up)	17.304 (Includes surcharge of 12% and cess of 3%)			17.472 (Includes surcharge of 12% and cess of 4%)		
B	Foreign Companies	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore
1	Regular tax	41.20	42.024	43.26	41.60	42.43	43.68
C	Firms and LLP	Net income does not exceed INR 1 crore	Net income exceeds INR 1 crore	Net income does not exceed INR 1 crore	Net income exceeds INR 1 crore		
1	Regular tax	30.90	34.61	31.2	34.944		
		Adjusted total income exceeding INR 20 lakhs but less than INR 1 crore	Adjusted total income exceeds INR 1 crore	Adjusted total income exceeding INR 20 lakhs but less than INR 1crore	Adjusted total income exceeds INR 1 crore		
2	AMT	19.06	21.34	19.24	21.55		

Notes - Surcharge and Cess rates

Particulars	Existing and Proposed	
For Domestic companies	NIL - If the Net income does not exceed INR 1 crore 7% - If the Net Income is between INR 1 crore and INR 10 crores 12% - If the Net income exceeds INR 10 crores	
For Foreign companies	NIL - If the Net income does not exceed INR 1 crore 2% - If the Net Income is between INR 1 crore and INR 10 crores 5% - If the Net income exceeds INR 10 crores	
For Firms and LLP	12% is levied if the total income exceeds INR 1 crore	
Cess - Education cess and Secondary Education cess (now proposed to be known as Health and Education cess)	3%	4%

Dividend

Widening of scope of “accumulated profits” for the purpose of Dividend

Explanation 2A in clause (22) of Section 2 of the IT Act is proposed to be inserted to widen the scope of the expression ‘accumulated profits’. The amendment provides that in the case of an amalgamated company, accumulated profits, whether capitalised or not, or losses as the case may be, shall be increased by the accumulated profits of the amalgamating company, whether capitalized or not, on the date of amalgamation.

This amendment will take effect from April 1, 2018 and would be applicable for AY 2018-19 onwards.

ELP Comment

Companies with huge accumulated profit balances previously adopted the route of amalgamation to reducecapital and circumvent the provisions of sub-clause (d) of clause (22) of section 2 of the IT Act thereby, escaping the liability to pay tax on distributed profits. With a view to prevent and curb such arrangements, the said Explanation 2A has been proposed to be inserted.

Application of DDT to deemed dividend

It is proposed to delete the Explanation to Chapter XII-D occurring after Section 115Q of the IT Act so as to impose DDT on deemed dividends in the hands of the company rather than such income being taxed in the hands of the recipient. Further, such deemed dividend is proposed to be taxed at the rate of 30%.

The proposed amendment is with the stated objective of bringing clarity and certainty in the taxation of deemed dividends, considering that taxability of deemed dividend in the hands of recipient has posed serious problem of collection of the tax liability and has also been the subject matter of extensive litigation. Further, a higher rate of 30% is aimed at preventing camouflaging dividend in various ways such as loans and advances.

This amendment will apply to transactions undertaken on or after April 1, 2018.

DDT on dividend payouts to unit holders in an equity oriented fund

Certain amendments are proposed to be made to Section 115R(2) of the IT Act to provide that where any income is distributed by a mutual fund being, an equity oriented fund, the mutual fund shall be liable to pay additional income tax at the rate of 10% on income so distributed. For this purpose, equity oriented fund will have the same meaning assigned to it in the new Section 112A of the IT Act.

The proposed amendment is with the stated objective of providing a level playing field between growth oriented funds and dividend paying funds, in the wake of new capital gains tax regime for unit holders of equity oriented funds.

This amendment will take effect from April 1, 2018.

MLI/ BEPS Amendments

Aligning the scope of “business connection” with modified PE Rule

Explanation 2 to Section 9(1)(i) of the IT Act is proposed to be amended to provide that “ business connection” shall also include any business activity carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. It is further proposed that such contracts should be:

(i) in the name of the non-resident; or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or

(iii) for the provision of services by that non-resident.

This amendment will take effect from April 1, 2019, would be applicable for AY 2019-20 onwards.

ELP Comment

The proposed amendment comes in the backdrop of the BEPS Action Plan 7 which has now been included in the Article 12 of Multilateral Convention to Implement Tax Treaty Related Measures. India is a signatory to the MLI; accordingly, with a view to align the provisions of domestic tax laws with the tax treaty and make the scope more broader the definition of 'business connection' has been proposed to be widened. The expanded definition of the term 'business connection' will now play a significant role in the determination of taxability of non-resident in India

"Business connection" to include "Significant Economic presence"

Explanation 2A is proposed to be inserted under Section 9(1)(i) of the IT Act. The amendment provides that 'significant economic presence' in India shall also constitute 'business connection'. Further, "significant economic presence" for this purpose, shall mean as under:

(i) any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or

(ii) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

It is also further proposed to provide the following:

Only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

Transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

The proposed amendment in the domestic law will enable India to negotiate for inclusion of the new nexus rule in the form of 'significant economic presence' in the DTAAs. It may be noted that the aforesaid conditions stated above are mutually exclusive. The threshold of "revenue" and the "users" in India will be decided after consultation with the stakeholders. Further, it is also clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.
This amendment will take effect from April 1, 2019, would be applicable for AY 2019-20 onwards.

ELP Comment

The introduction of the nexus based rule 'significant economic presence' is one of the options discussed by OECD under its BEPS Action Plan 1 substantially widens the scope of business connection. The concept of digital PE has been proposed to be introduced; by which a non-resident entity could be regarded as having a business connection in India even though no activity has been physically carried out in India. Indian residents dealing with non-residents will have to be mindful of this proposed amendment especially the tax withholding.

Exemptions

Royalty and FTS payment by NTRO to a non-resident

It is proposed to insert a new clause (6D) in Section 10 under which income arising to a non-resident, not being a company, or a foreign company, by way of royalty from, or fees for technical services rendered in or outside India will be exempt from income tax and consequently, there would be no obligation of tax deduction at source by NTRO.

This amendment will take effect from April 1, 2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent years.

Tax deduction at source and manner of payment in respect of certain exempt entities

Currently, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. Further, there are no checks whether such trusts or institutions follow the provisions of deduction of tax at source under Chapter XVII-B of the Act.

In order to encourage a less cash economy and to reduce the generation and circulation of black money, it is proposed to insert a new Explanation to Section 11 to provide that for the purposes of determining the application of income, the provisions of Section 40(a)(ia) and of Section 40A(3) and (3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head “Profits and gains of business or profession”.

It is also proposed to insert a similar proviso in clause (23C) of section 10 to provide similar restriction as above on the income of certain funds, universities, educational institutions and hospitals.

This amendment will take effect from April 1, 2019 and will, accordingly, apply in relation to AY 2018-19 and subsequent years.

Exemption to specified income of class of body, authority, Board, Trust or Commission in certain cases

Currently, under section 10(46) of the Act, specified income arising to a body or authority or Board or Trust or Commission, established or constituted by or under a Central or State Act or by a Central or State Government with the object of regulating or administering any activity for the benefit of general public, would be exempt from tax subject to the condition that the said entity is not engaged in any commercial activity. The entity eligible to claim tax exemption under the said section is required to be notified by the Central Government in the official Gazette.

At present, the Central Government is required to notify each case separately even if they belong to the same class of cases. Consequently, the whole process of approval is considerably delayed. Accordingly, it is proposed to amend the said clause so as to enable the Central Government to also exempt, by notification, a class of such body or authority or Board or Trust or Commission (by whatever name called).
This amendment will take effect from April 1, 2018.

Income from Salaries

Standard deduction on salary income

Section 16 of the IT Act is proposed to be amended to allow a standard deduction upto Rs 40,000/- or the amount of salary received, whichever is less in computing income under the head ‘Salary’.

This amendment will take effect from April 1, 2019 and would be applicable for AY 2019-20 onwards.

ELP Comment

Considering the limited avenues to claim expenses available with the salaried person and reduce the tax burden, the Government has proposed Standard Deduction of Rs 40,000

Interestingly, the benefit of standard deduction gets offset by the withdrawal of deduction permitted earlier towards medical expenses and traveling allowance as explained below and hence the end result for a salaried person is not significant

We have tabulated below the illustrative savings:

Particulars	Amount in INR
Standard deduction	40,000
Less: Medical reimbursement	(15,000)
Less: Transport allowance	(19,200)
Net benefit	**5,800**

Restriction for medical reimbursement and transport allowance

It is proposed to amend section 17 of the IT Act relating to “Salary” “perquisite” and “profits in lieu of salary” as defined.

Clause (v) of the proviso to section 17 (2)(viii) provides that any sum paid by the employer in respect of an expenditure incurred by the employee on his medical treatment or treatment of his family member, not exceeding Rs. 15,000 in the previous year was not considered as perquisite. It is proposed to omit the said clause (v).
It is also proposed to take away the travel allowance of Rs 1600 per month.

This amendment will take effect from April 1, 2019 and would be applicable for AY 2019-20 onwards.

ELP Comment

This is will have negative impact for the salaries persons since now such reimbursement / allowance will be added to the income of the employee

Presumptive Taxation

Currently, certain types of compensation received are not offered to tax claiming it to be a capital receipt.The Budget proposes that any compensation received or receivable, whether revenue or capital in connection with termination of terms and conditions of any contract relating to business to be taxed as business income

ELP Comment

This amendment will have far reaching implications and will go to reverse the well settled position of the law evolved over a period of time

Presumptive Taxation

In case of carriage of goods

Section 44AE of IT Act is proposed to be amended to provide that in case of heavy goods vehicle (which means any goods carriage, the gross vehicle weight of which exceeds 12,000 kgs), the determination of income would be based on the ton capacity of the vehicle i.e. income would be deemed to be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, per month or part of the month for each goods vehicle or the amount actually claimed to have been earned by the assessee, whichever is higher. In case of other vehicles, the existing provision continues.

This amendment will take effect from April 1, 2019, would be applicable for AY 2019-20 onwards.

ELP Comment

Extending the presumptive taxation regime under Section 44AE of the IT Act to heavy goods vehicle will reduce the compliance burden on transporters.

Capital Asset & Capital Gains

Measures to promote IFSC

In order to promote IFSC, Section 47 of the IT Act is proposed to be amended by introducing clause (viiab), by providing that any transfer, undertaken by a non-resident on a recognized stock exchange located in an IFSC of (i) global depository receipt; or (ii) a rupee denominated bond; or (iii) derivatives shall not be regarded as a transfer for the purposes of “capital gains”, provided that the consideration payable by such non-resident is in foreign currency.

This amendment will take effect from April 1, 2019, would be applicable for AY 2019-20 onwards.

ELP Comment

This amendment has been proposed in order to promote development of world class financial services center in India. This amendment puts recognized stock exchanges in IFSC in India at par with their international counterparts.

Rationalization of provision relating to conversion of stock in trade into capital asset

Section 28 of the IT Act is proposed to be amended to bring within its purview taxation of conversion of stock in trade into capital asset. Accordingly, it has been proposed to amend Section 28 by introducing clause (via) to provide that the fair market value of the inventory on the date of conversion shall be treated as business income of the assessee. The method to determine the fair market value shall be prescribed. Corresponding amendment has been proposed to Section 2(24) of the IT Act by introducing sub-clause (xiia) to the definition of income.

Section 49 of the IT Act is proposed to be amended to provide that for the purposes of computation of capital gains, the cost of acquisition, in case of an inventory which has been converted into a capital asset, shall be deemed to be the fair market value on the date of conversion of the inventory. Corresponding amendment has been proposed to Section 2(42A) by introducing sub-clause (ba) in clause (i) of Explanation -1, to provide that period of holding shall be calculated from the date of conversion.

This amendment will take effect from April 1, 2019, would be applicable for AY 2019-20 onwards.

ELP Comment

Considering that there was no provision to tax a transaction of conversion of stock in trade into capital asset, whereas a corresponding provision was there in Section 45 for conversion of capital asset into stock in trade, amendment has been proposed in Section 28, wherein fair market value of the inventory shall be deemed to be the business income on conversion of such inventory into capital asset. Accordingly, amendment is also proposed in Section 2(24) of the IT Act to include the fair market value as income. Also, consequential amendments have been proposed to be carried out in Section 49 (to determine the cost of acquisition) and 2(42A) (to determine the period of holding) of the IT Act in order to compute capital gains on transfer of such capital asset.

Rationalization of certain provisions in relation to immoveable property

Section 43CA and Section 50C of the IT Act are proposed to be amended to provide that in case of transfer of immoveable property, if the difference between the stamp duty value and the sale consideration does not exceed 5% of the sale consideration, then the consideration received shall be deemed to be the sale consideration for the purposes of computation of capital gains. Corresponding amendment has been proposed to Section 56 of the IT Act in the hands of the purchaser, to provide that excess of stamp duty value over the consideration received shall be deemed to the income of the purchaser, provided the excess is higher than Rs 50,000 or the amount equal to 5% of the consideration, whichever is higher.

ELP Comment

The proposed amendments to Section 50C and Section 56 of the IT Act provide a relief to the real estate sector. However, the difference of 5% between the stamp value and the consideration may not be of any assistance to a genuinely distressed transactions. Amendment proposed to Section 43CA of the IT Act in case of transfer of business assets, will provide relief to real estate developers.

Amendments in holding period of re-investments

Section 54EC of the IT Act provided that capital gains, arising from the transfer of a long-term capital asset, invested in a long-term specified asset at any time within a period of six months after the date of such transfer, shall not be charged to tax, provided the conditions specified in the section are fulfilled. The provision were made applicable to capital gains arising on any long term capital asset.

Section 54EC of the IT Act is proposed to be amended to restrict its scope to only capital gains arising from long term capital assets, being land or building or both. Further, it is also proposed to provide that long-term specified asset, for making any investment under the section on or after April 1, 2018, shall mean any bond, redeemable after five years and issued on or after April 1, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

This amendment will take effect from April 1, 2019, would be applicable for AY 2019-20 onwards.

ELP Comment

Benefit of Section 54EC has been proposed to be restricted in its applicability to only transfer of land or building or both. Further, the holding period of bonds, as measure of eligible investment for purposes of this section, has been increased to five from existing three years.

LTCG relating to listed securities

A new section 112A is proposed to be inserted in the IT Act to provide that LTCGs arising on transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or an unit of a business trust shall be taxed at 10 per cent of such capital gains exceeding one lakh rupees. This concessional rate of 10 per cent will be applicable to such LTCGs, if—

i) STT has been paid on both acquisition and transfer of long term capital asset is in the nature of an equity share in a company; and

ii) STT has been paid on transfer of long term capital asset being a unit of an equity oriented fund or a unit of a business trust.

Further, Section 112A empowers the Central Government to notify the nature of acquisitions to which requirement of payment of STT shall not apply.

The requirement of payment of STT at the time of transfer of long term capital asset being an unit of an equity oriented fund or business trust shall not apply if the transfer is undertaken on recognized stock exchange located in any IFSC and the consideration of such transfer is received or receivable in foreign currency.

Cost of acquisition of capital asset acquired before 1 February 2018

The cost of acquisition in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of –

- the actual cost of acquisition of such asset; and
- the lower of –

  o the fair market value of such asset; and

  o the full value of consideration received or accruing as a result of the transfer of the capital asset

For the purposes of proposed section 112A of the IT Act, fair market value of the capital asset shall mean:

Capital asset is listed on recognised stock exchange – Highest price quoted on 31 January 2018

Capital asset is listed on recognised stock exchange but no trading is done on 31 January 2018 – Highest price on a day immediately preceding 31 January 2018 when it was traded

Capital asset is a unit and is not listed on recognised stock exchange – Net asset value as on 31 January 2018

Discontinuation of exemption under Section 10(38) of the IT Act w.e.f. 1 April 2018

Section 10(38) of the IT Act granting exemption of income arising on transfer of specified securities is proposed to be amended to provide that no exemption shall be granted to the income arising from the transfer of long-term capital asset being an equity share or units of an equity oriented fund or business trust made on or after 1 April 2018.

Summary of tax rates on LTCGs for resident taxpayers

Type of asset	Rate of tax on LTCG	
	RExisting	Proposed*
Equity shares		
STT paid on both acquisition and transfer	Exempt	10% (without indexation) if LTCG exceeds INR 1 lakh
In any other case	20%	20%
In any other case	20%	20%

Units of equity oriented funds or business trust		
STT paid on transfer of units	Exempt	10% (without indexation) if LTCG exceeds INR 1 lakh
In any other case	20%	20%
In any other case	20%	20%

Notes

- The above provisions shall be applicable from 1 April 2018;
- The above rates are exclusive of surcharge and education cess;
- No rebate under Section 87A shall be allowed; and
- The above rates are applicable to resident taxpayers.

Non-applicability of STT on certain transactions

As per the newly inserted Section 112A of the IT Act, STT shall not apply to the transactions if the following two conditions are satisfied:

- Transfer undertaken on a stock exchange located in IFSC; and
- Consideration for transfer is received in foreign currency.

ELP Comment

The IT Act was amended in 2004 to introduce Section 10(38) exempting income arising on transfer of LTCGs being securities on which STT has been paid. The intention behind introduction of Section 10(38) in 2004 was to simplify the tax regime on transactions in securities undertaken on the recognised stock exchange. While by way of introduction of Section 112A, tax on LTCGs on specified securities has been introduced, the levy of STT still continues.

LTCGs tax on transfer of securities by the FIIs

Consequent to the proposal for withdrawal of exemption under Section 10(38) of the IT Act as regards LTCGs tax on transfer of securities, a proviso is being added to Section 115AD(1)(b)(iii) to provide that the FIIs will also be liable to tax on such LTCGs, in excess of one lakh rupees, at the rate of 10%.
This amendment will take effect from April 1, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

Amendment in Relation to ICDS

Amendment in relation to ICDS
Section 145 of the Act empowers the Central government to notify ICDS. In pursuance, the Central Government has notified ten such standards effective from 1st April 2017 relating to Assessment year 2017-18.These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” or “Income from other sources”.
In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS in case of Chambers of Tax consultants v. Union of India, it is proposed to —

(i) Amend section 36 of the IT Act to provide that marked to market loss or other expected loss as computed in the manner provided in ICDS notified under sub-section (2) of section 145, shall be allowed deduction;

(ii) Amend 40A of the IT Act to provide that no deduction or allowance in respect of marked to market loss or other expected loss shall be allowed except as allowable under newly inserted clause (xviii) of sub-section(1) of section 36;

(iii) insert a new section 43AA in the IT Act to provide that, subject to the provisions of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss, which shall be computed in the manner provided in ICDS as notified under sub-section (2) of section 145;

(iv) insert a new section 43CB in the IT Act to provide that profits arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method except for certain service contracts, and that the contract revenue shall include retention money, and contract cost shall not be reduced by incidental interest, dividend and capital gains.

Section 145A which refers to the method of accounting in certain cases has been replaced by Sections 145A and 145B vide the Finance Bill, 2018.
The new Section 145A provides that for the purpose of determining the income chargeable under the head “Profits and gains of business or profession:

(a) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS notified under Section 145(2).

(b) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.

(c) inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in ICDS notified under Section 145(2).

(d) inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS notified under Section 145(2) and for this purpose the comparison of actual cost and net realisable value shall be done category-wise.
The new Section 145B provides that:

a. interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.

b. the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

c. income referred to in Section 2(24)(xviii) shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

This amendment will take effect retrospectively from April 1, 2017 i.e. the date on which the ICDS was made effective and will, accordingly, apply in relation to AY 2017-18 onwards.

ELP Comment

The introduction of the nexus based rule - 'significant economic presence' is one of the options discussed by OECD under its BEPS Action Plan 1 substantially widens the scope of business connection. The concept of digital PE has been proposed to be introduced; by which a non-resident entity could be regarded as having a business connection in India even though no activity has been physically carried out in India. Indian residents dealing with non-residents will have to be mindful of this proposed amendment especially the tax withholding.

Income from Other Sources

Compensation on termination / modification of employment

A new clause (xi) has been proposed to be inserted to Section 56(2) of the IT Act to provide that any compensation or other payment, due to or received by any person (by whatever name called), in connection with (a) the termination of his employment, or (b) the modification of the terms and conditions of his employment, will be treated as income from other sources in the hands of the recipient.

A corresponding amendment has also been made to the definition of the term “Income” under Section 2(24) of the IT Act to include the above referred compensation or other income under Section 56(2)(xi), in its scope. This amendment will take effect from April 1, 2019 and will, accordingly, apply in relation to the AY 2019-20 and subsequent AYs.

ELP Comment

Compensation in connection with the termination of employment or modification of terms and conditions relating thereto has been presently covered as “profits in lieu of salary” under Section 17(3)(i) of the IT Act and therefore taxable as salary income. However, whether a particular type of compensation (say termination bonus, ex-gratia payment etc.) or payment made after cessation of employment (being in the nature of capital receipt) can be considered as ‘profits in lieu of salary’ has been a contentious issue. Therefore, with an intent to put rest to these litigations, it is proposed that every type of payment (by whatever name called) and thus whether in the nature of capital or revenue would be subjected to tax as income from other sources.

Transaction in money or property between wholly owned subsidiary and its holding

The clause (IX) of fourth proviso to Section 56(2) of the IT Act has been proposed to be amended to include reference of clause (iv) and clause (v) of Section 47 in the same. The effect of the amendment is that any sum of money or property received by a wholly owned subsidiary company (being Indian Company) from its holding company or by a holding company (being Indian Company) from its wholly owned subsidiary company will not be taxable as income from other sources under Section 56(2)(x) of the IT Act.

This amendment will take effect from April 1, 2018 and shall accordingly, apply in relation to the transaction made on or after April 1, 2018.

ELP Comment

The amendment is brought in to align the same with section 47 which exempts the transaction between wholly owned subsidiary and its holding Company.

Set off, or Carry Forward & Set off

Carry forward and set off of losses in case of certain companies

Section 79 of IT Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 percent of the voting power, on the last day of the year or years in which the loss was incurred.

Generally, in case of a company seeking insolvency resolution under Insolvency and Bankruptcy Code, 2016 (IBC) the beneficial owners of shares change beyond the permissible limit prescribed under section 79. The above provision acted as a hurdle for restructuring and rehabilitation of the companies seeking insolvency under IBC.

In order to address this problem, it is proposed to relax the rigors of section 79 for companies whose resolution plan has been approved under IBC, after giving a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

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

Deduction

Deductions in respect of specified business [Section 80-IAC]

W.e.f. April 1, 2016, 100% deductions under Section 80-IAC were made available to start-ups in respect of the profits and gains derived from specified eligible businesses for three consecutive years out of seven years. These deductions have been further extended for two more years.

Further, the definition of 'eligible business' has been amended to include improvement of any products or processes or services or scalable business models with high potential for employment generation or wealth creation.

The benefit of deductions will be available only to businesses which fulfil the following:

- The business is incorporated before the April 1, 2021
- The total turnover of its business must not exceed INR 25 crores in any seven previous years beginning from the year in which it is incorporated.
- The amendment will take effect from April 1, 2018 and will, accordingly, apply in relation to AY 2018-19 onwards.

Deductions in respect of employment of new employees [Section 80-JJAA]

An amendment is proposed to be made w.e.f. April 1, 2019, whereby businesses engaged in manufacturing footwear or leather products are allowed an additional 30% deduction in respect of emoluments paid to eligible new employees. Presently, this deduction is available only to businesses engaged in manufacturing apparel.

The minimum period of employment for eligibility to this deduction is 240 days in case of businesses engaged in manufacturing footwear or leather products, and 150 days in case of apparel. However, this deduction is available even if employees are employed for a period less than the prescribed minimum period in the PY but remain employed for a period in excess of the prescribed minimum period in the immediately succeeding year.

Deductions in respect of certain income of Producer Companies [Section 80-PA]

A new Section 80-PA is proposed to be inserted with effect from April 1, 2019, which provides 100% deduction in respect of the profits and gains derived by Farm Producer Companies from eligible businesses subject to the following:

- The assessee is a Farm Producer Company having total turnover of less than INR 100 crore in any PY.
- The PY for claiming the deduction should commence on or after April 1, 2019, but before the April 1, 2025.
- The deduction under this section will be allowed after considering the available deductions under any other provision of this Chapter. In other words, the deduction under Section 80PA will be reduced by the deductions under such other provision.

The term 'eligible business' has been defined to mean:

- the marketing of agricultural produce grown by the members; or
- the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose ofsupplying them to the members; or
- the processing of the agricultural produce of the members.

Note that similar deduction in respect of profit of cooperative societies which provide assistance to its members engaged in
primary agricultural activities is already available in Section 80-P.

The amendment will take effect from April 1, 2018 and will, accordingly, apply in relation to AY 2019-10 onwards.

Deductions in respect of interest on deposits in case of senior citizens [Sections 80-TTB]

A new Section 80-TTB is proposed to be inserted w.e.f. April 1, 2019, which provides a deduction of up to INR 50,000 from the gross total income, in computing the total income of senior citizen assesses whose income includes any income by way of interest on deposits with a banking company, or banking institution, a co-operative society engaged in carrying on the business of banking or a Post Office. Accordingly, Section 80-TTA has also been amended to preclude persons covered under Section 80-TTB.

ELP Comment

The deduction under this section is available only in case of any deposits made in individual capacity, and not in respect of income as a partner of a firm or a member of an association or any individual of a body.

Determination of Tax in Certain Special Cases

Taxation of certain domestic companies

Section 115BA of the IT Act provides that the total income of a newly set up domestic company engaged in the business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed at the rate of 25%, subject to conditions specified therein.

The said section is proposed to be amended to restrict the said rate of taxation only in relation to income from the specified businesses.

In respect of income other than from the specified businesses, which are otherwise subject to a scheduler tax at a rate which is lower or higher than 25%, the tax payers were being subjected to unintended hardship or unwarranted relief. The proposed amendment clarifies that the provisions of Section 115BA would be restricted to the income from the specified businesses and income which are at present taxed at a scheduler rate will continue to be so taxed.

The amendment will take effect retrospectively from the April 1, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

Taxation of unexplained amounts

Under the provisions of the IT Act, certain unexplained amounts are deemed as income under Section 68, 69, 69A, 69B, 69C or 69D, which are taxed at a higher rate of sixty percent, with no corresponding deduction in respect of any expenditure or allowance or set-off of any loss.

The stated restriction in relation to inadmissibility of any deduction etc. was applicable to cases where the assessee disclosed such income in its return on his own volition.

The amendment proposes to rationalize provisions of Section 115BBE by making the stated restrictions applicable even in cases where the corresponding income is not reported in the income tax return and is determined by the AO.

This amendment will take effect retrospectively from April 1, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

Special Provisions Relating to Certain Companies, LLPs, etc

Reduction of unabsorbed depreciation and loss for MAT computation, for companies under insolvency resolution process

Sub-clause (iih) is being inserted to Explanation 1 to Section 115JB of the IT Act to provide that the aggregate amount of unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) shall be allowed to be reduced from the book profit while computing MAT for a company whose application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the relevant adjudicating authority.

In terms of existing Section 115JB of the IT Act, a deduction from book profit is provided in respect of the amount of loss brought forward or unabsorbed depreciation, whichever is less. Accordingly, where either of the stated components are Nil or negligible, no deduction is effectively available. The proposed amendment is directed towards relaxing this provision for rehabilitating companies seeking insolvency resolution.

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

ELP Comment

The amendment is in line with the CBDT circular issues in January 2018 providing relief to cases covered under IBC

MAT not applicable to certain foreign companies

Explanation 4A is being inserted to Section 115JB to clarify that MAT shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if its total income comprises solely of profits and gains from business referred to in Section 44B (shipping business) or Section 44BB (exploration of minerals oils etc.) or Section 44BBA (aircraft operations) or Section 44BBB (civil construction), provided such income has been offered to tax at the rates specified in the said Sections.

This amendment will take effect, retrospectively from April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.

Reduced AMT for unit located in an IFSC

Sub-clause (4) is proposed to be inserted to Section 115JC of the IT Act and reflective amendments are proposed to be made to Section 115JF of the IT Act, to provide that a lower AMT of 9% instead of 18.5% would apply to a unit located in International Financial Service Center. The said benefit is subject to the condition that the income of such unit is solely in convertible foreign exchange. The said amendment is with the stated objective of promoting the development of world class financial infrastructure in India.

This amendment will take effect, from April 1, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

ELP Comment

The above clarification is a welcome clarification wherein issue of applicability of MAT to certain foreign companies has been put to rest. However, it would have been prudent if all foreign companies not having a PE in India were also covered.

Procedural Aspects

PAN required for financial transactions exceeding INR 2.5 lakhs

Section 139A lists the persons who are required to be allotted a PAN. With a view to use PAN as an UEN for non-individual entities, it is proposed that every person, not being an individual, who enters into a financial transaction of an amount aggregating to INR 2.5 lakhs or more in a financial year shall be required to apply to the AO for allotment of PAN.

Further, in order to link the financial transactions with natural persons, it is also proposed that the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities shall also apply to the AO for allotment of PAN.

This amendment will take effect from April 1, 2018.

Verification of returns in case of a company under corporate insolvency resolution process

It has been proposed that returns filed by the companies whose application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the IBC, shall be verified by an Insolvency Professional appointed under the IBC.

This amendment will take effect from April 1, 2018 and will be applicable to returns filed on or after the said date.

Rationalisation of adjustments while processing returns

To determine the total income or loss of a person for processing his returns, Section 140(1)(vi) provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return. Considering the tax has been withheld and with a view to restrict the scope of adjustments and reduce hardship, it is proposed to insert a new proviso to the said clause to provide that no adjustment under sub-clause (vi) shall be made in respect of any return furnished on or after the AY commencing on April 1, 2018.
This amendment will take effect from April 1, 2018 and will, accordingly, apply in relation to the assessment years 2018-2019 onwards.

New scheme for scrutiny assessment

It is proposed that a new scheme will be introduced for making assessments with greater transparency and accountability, by eliminating the interface between the AO and assessees, optimal utilization of resources, and introducing team-based assessment in dynamic jurisdiction. For this purpose, new sub-sections (3B), (3C) and (3D) have been inserted under Section 143.
The Central Government has been enabled to:
- prescribe the said new scheme for scrutiny assessments, by way of notification in the Official Gazette;
- direct, that any of the provisions of this Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein – directions to be issued latest by March 31, 2020.

ELP Comment
The efficiency of the prpposal would depend upon the fine print of the scheme as and when notified.
It is seen that Revenue vide Instruction 8/2017 has undertaken such e-proceedings for certain time barring cases in select metro cities.

TDS Provisions

7.75% GOI Savings (Taxable) Bonds, 2018

The existing provision under Section 193 of the IT Act provides for deduction of tax @10% in respect of interest income earned in excess of INR 10,000/- on 8% Savings (Taxable) Bonds, 2003.

Government has now decided to discontinue the existing 8% Savings (Taxable) Bonds, 2003 and replace the same with a 7.75% GOI Savings (Taxable) Bonds, 2018. The interest received under the new bonds will continue to be taxed similar to the earlier bonds. The provisions of Section 193 are proposed to be amended to allow for deduction of tax at source on interest payable during the financial year if the same is more than INR 10,000/-.

This amendment will take effect from April 1, 2018.

Interest income earned by senior citizens

It is proposed to amend Section 194A so as to raise the threshold for deduction of tax at source on interest income (other than interest on securities) for senior citizens from INR 10,000/- to INR 50,000/- in case where the interest is payable by a Banking Company, Cooperative Society engaged in banking business and on deposits with post office. For the purposes of this clause, “senior citizen” means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.

This amendment will take effect, from April 1, 2018.

Appeals and Revision

Appeals to Appellate Tribunal

To encourage ease of compliances and self-assessment under the present tax regime, certification of various reports by a qualified professional has been provided to ensure that the information furnished is correct. While there exist penal provisions for an assessee in case of furnishing incorrect information, the previous Finance Act saw the introduction of a penal provision for furnishing incorrect information by an accountant or a merchant banker or a registered valuer, in a report or certificate under any provisions of the Act or the Rules made thereunder. On occurrence of the same, the Assessing Officer or the Commissioner (Appeals) may direct the defaulter to pay a sum of ten thousand rupees for each such report or certificate by way of penalty. With effect from April 1, 2018, such penalty can be appealed against before the Appellate Tribunal.

Rationalisation of CbCR Provisions

With regard to the furnishing of the CbCR, it is proposed to incorporate the following amendments / clarifications:

- The time allowed for furnishing the CbCR, in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to twelve months from the end of the reporting accounting year;
- Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report of the nature referred to in sub-section (2) in the latter's country or territory;
- the time allowed for furnishing the CbCR, in the case of constituent entity resident in India, having a non-resident parent,shall be twelve months from the end of reporting accounting year;
- the due date for furnishing of CbCR by the the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory;
- Agreement would mean an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A, and also an agreement for exchange of the report referred to in sub-section (2) and sub-section (4) as may be notified by the Central Government;
- "reporting accounting year" has been defined to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2) and sub-section (4).

The above amendments will come into effect from April 1, 2017 and will, accordingly, apply in relation to AY 2017-18 and subsequent years.

ELP Comment

The proposed amendments go towards strengthening India's commitment to implement the recommendationsof Action Plan 13 of Base Erosion and Profit Shifting (BEPS). The said amendments have been proposed with theobjective of relaxing the timelines for compliance on the taxpayers and improving the effectiveness of such reporting.

Banking, Finance, Real Estate, IBC, Infrastructure, Private Equity & Venture Capital

Bank Recapitalization

In pursuance to its practice over the last few years, the Budget has allocated a total amount of INR 80,000 crores for re-capitalization of public sector banks by way of issuing bonds in 2018-19.

ELP Comment

The Union Budget, 2017 had provided INR 10,000 crores, which was duly implemented by the government. This is in line with the Indradhanush road map. The reform agenda is aimed at achieving "EASE" - Enhanced Access and Service Excellence, focusing on six themes namely (i) customer responsiveness, (ii) responsible banking, (iii) credit off-take, (iv) public sector banks as Udyami Mitra, (v) deepening financial inclusion and digitalisation and (vi) developing personnel for public sector banks.

This is primarily the result of the NPAs and the stressed assets for which the banks have to create additional provisioning. An ongoing bad debt problem in India has been brewing since 2012 when banks expanded its exposure in the debt sphere at a fast pace, including lending to a number of problematic sectors such as telecommunications and mining. This recapitalization will pave the way for the public sector banks to lend additional credit of INR 5 lakh crore which is aimed at tackling the balance sheet problem and reviving the growth and investment. The recapitalization programme will now relax the provisioning norms of these public sector banks on accounts identified for bankruptcy proceedings to free up capital and boost credit

The recapitalization of public sector banks has been proposed to be in done three ways: budgetary allocation; raised from the market through the issue of equity shares by banks; and issue of recapitalization bonds by the government. It is also proposed under the Budget to allow strong Regional Rural Banks to raise capital from the market to enable them to increase their credit to rural economy.

Agricultural Funding

The Finance Minister in the Budget has proposed the following credit measures in the agricultural sector in India:

1. The benefit of Kisan Credit Cards have been extended to fisheries and animal husbandry farmers to help them meet their working capital needs.
2. The scope of LTIF, which has been set-up for funding and fast tracking the implementation of incomplete major and medium irrigation projects in India, has been expanded to cover specified command area development projects. meet their working capital needs.
3. The Budget proposes the setting-up of Fisheries and Aquaculture Infrastructure Development Fund (FAIDF) for the fisheries sector and Animal Husbandry Infrastructure Development Fund (AHIDF) for financing infra structure requirement of animal husbandry sector. The initial corpus of these two funds has been pegged at INR 10,000 crore.

4. The volume of institutional credit to the agricultural sector has been raised to INR 11 lakh crore for the year 2018-19 from INR 10 lakh crore in 2017-18. But interestingly, the Budget does not speak about treatment of the current outstanding debt of these debt-ridden farmers.
5. The Budget proposes that NITI Aayog, in consultation with the state governments, will be working towards introducing a suitable mechanism to enable access to credit for lessee cultivators without compromising the rights of the land owners.

ELP Comment

The proposed amendments go towards strengthening India's commitment to implement the recommendationsof Action Plan 13 of Base Erosion and Profit Shifting (BEPS). The said amendments have been proposed with theobjective of relaxing the timelines for compliance on the taxpayers and improving the effectiveness of such reporting.

Micro Small And Medium Enterprises

Financing needs of MSMEs

The Finance Minister in his Budget speech 2018 ("Budget Speech") has announced that INR 3,794 crore will be allocated for extending credit support to MSMEs through capital and interest subsidy. Further, the Finance Minister has also announced that online sanction of loans to MSMEs will be increased. The Finance Minister said that after demonetisation, enormous amount of information was generated, which will help address the issues of MSMEs, including enabling easier credit. He added that the MSME sector has seen formalization after GST and demonetisation.

ELP Comment

Both the Government of India and the RBI have long been convinced of the contribution, and of the enormous potential, of the MSME sector to the economic growth, employment and income generation. Yet, lack of access to finance (particularly working capital) is a major obstacle to their growth on account of various factors such as higher risks, sizeable transaction costs and lack of adequate collateral. Latest data on credit disbursed by banks shows that out of a total outstanding credit of INR 26,041 billion as in November 2017, 82.6% of the amount was lent to large enterprises. The MSME sector has received only 17.4% of the total credit outstanding.

Hence, the key challenge is to support banks in extending credit facilities to MSMEs. It will be a greater challenge to reach informal MSMEs. This is due to intrinsic weaknesses in the MSME sector, flaws in delivery models and, most importantly, lingering deficiencies in the enabling environment for financial services, i.e., the financial infrastructure covering accounting and auditing standards, credit reporting systems, collateral and insolvency regimes.

Stressed Assets In The MSME Sector

The Finance Minister in his Budget Speech has stated that the government will announce measures to address the issues of NPAs and stressed accounts of MSMEs.

ELP Comment

This assumes significance given that MSMEs face a number of legal, financial, and regulatory challenges to restructuring that differ from those of larger corporates, such as the rigidity and cost of the existing insolvency regime, cost of loan restructuring and the lack of alternative sources of financing. Given the large number of MSMEs and their small sizes, lower reporting requirements (especially when dealing with informal MSMEs) and lack of adequate collateral, MSME loan restructuring is costlier and riskier for banks than for large firms.

The recent insolvency reforms in the country are in some ways ill-suited for MSMEs. For instance, the recent amendment to the IBC by way of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 ("Amendment Act") which bars a promoter of a corporate debtor from submitting a resolution plan, has put MSMEs at a disadvantage by limiting their resolution options and forcing them to liquidate, since they usually have a limited number of buyers and rely largely on promoters for a resolution. As many as 300 cases involving MSMEs have been admitted by the NCLT under the IBC and their resolution process has been initiated.

Further, the Amendment Act also stipulates that for an entity to be eligible to submit a resolution plan, it is required to "fulfil such criteria as may be determined by the resolution professional with the approval of the committee of creditors, depending upon the complexity and scale of operations of the business of the corporate debtor, and such other conditions as may be specified by the Board (i.e., the IBBI)". Such specific and detailed criteria may be important and required for large corporate debtors, however, for smaller cases, especially for the MSMEs, any such criteria may reduce the options for resolution. It is important in the case of MSMEs to have lesser restrictions to attract the maximum possible resolution applicants.

The proposed insertion of Section 92CE in the IT Act is aligned with the position in certain other countries, including Canada, Korea, South Africa. It is proposed to provide that where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise, and the interest on such advance, shall be computed as the income of the assessee, in the manner as may be prescribed.

The above amendments will take effect from April 1, 2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent years.

Trade Receivables And Credit Exchange

The Finance Minister also announced bringing on board state-owned banks on the Trade Receivables and Credit Exchange ("TReDS") and link it with the GST network.

ELP Comment

One of the major obstacles being faced by MSMEs in internally addressing their financing needs is delay in receivables from their clients. The TReDS was set up under the aegis of RBI in 2015 as an electronic platform for financing of trade receivables of MSMEs due from corporate and other buyers (including government departments and state-owned enterprises). The objective of TReDS is to create electronic bill factoring exchanges that could electronically accept and settle bills so that MSMEs could encash their receivables without delay, thereby improving the liquidity in the MSME sector. It also aims at improving the finances of MSMEs by shortening the cash cycle through a structured bill discounting framework with participation of all the stakeholders. Financiers are a vital part of TReDS, who have the task of bidding on factoring units (which have invoices or bills of exchange as underlying instruments) that have been uploaded on the platform. This move will enable larger financing of MSMEs and also considerably ease cash flow challenges faced by them.

Corporate Bonds Market

The Finance Minister stated that the market regulator SEBI may consider mandating large corporates to use bond market to finance one-fourth of their funding needs. Further to deepen India's corporate bond market, the Finance Minister has urged regulators to consider permitting investment in bonds from 'AA' to 'A' grade ratings.

ELP Comment

These measures will greatly help in expanding the corporate bond market in India and encourage companies to tap this route for funds. The Finance Minister has recognised in the Union Budget that in India, most regulators permit only bonds with 'AA' rating as eligible for investment. With the proposed movement from 'AA' to 'A' grade rating investment funds like pension funds, insurance funds and mutual funds which invest in corporate bonds across different schemes will have a wider options to choose from.

Companies today are faced with overlapping sets of legislations, compliances and regulators in relation to such issuances. Accordingly, effective regulations streamlining such issues will make such route for more appealing to the companies.

From an investor perspective, the introducing of IBC has enabled all types of creditors to access the insolvency process and thereby bring them at a level playing field with domestic financial institutions.

Digital Economy

Crypto-Currencies And Blockchain

The Finance Minister has put several debates to rest by clearly stating in the Budget that the government does not consider crypto-currencies as a legal tender or coin and will take all measures to eliminate use of these crypto-assets in financing illegitimate activities or as part of the payment system. The Finance Minister emphasized on exploring the use of blockchain (the technology that drives crypto-currency) proactively, for ushering in digital economy and at the same time eliminating the use of crypto-currency.

ELP Comment

It is certain that the government is taking all steps to eliminate use of crypto-currencies, However, it has not yet prohibited the ownership of virtual currencies. The Income-tax department has issued notices to owners of virtual currencies who have made earnings as a result of trading in crypto-currencies and intends to tax such income.

The Department of Economic Affairs had also constituted an inter-disciplinary committee to examine the existing global regulatory and legal structures governing bitcoin and other such virtual currencies. The government is examining the committee's report.
In pursuance to the government's push for development of the digital economy, the Budget confirmed the importance of financial technology and usage of concepts such as blockchain. Such technological advancement will not only allow transactions to be completed in a shorter span of time, it will also make the process more secure.

NABARD

The government has recognised and facilitated development of Mega Food Parks as food processing units. Such food parks were being funded by NABARD out of the fund set-up by Ministry of Food Processing Industries. This was in order to provide a focused growth to agricultural and food processing infrastructure.

These food parks inter alia allow proper storage and processing of agricultural produce in order to ensure optimum utilisation thereof. The Finance Minister mentioned in the Budget that the government will be building state of art facilities in the 42 Mega Food Parks set-up across the country. These food parks have a central processing unit and multiple processing units within respective states.

The Finance Minister has also emphasized on the role being played by NABARD to provide adequate credit to the agricultural sector. The Budget provides some new funds and enhancement of existing funds to NABARD for providing credit to the farmers and thereby provide the necessary boost to agriculture.

Overseas Direct Investment

The Finance Minister has announced that the government will review existing guidelines and processes and bring out a coherent and integrated ODI policy while citing that the ODI from India has grown to USD 15 billion per annum.

ELP Comment

While encouraging and allowing Indians to set up businesses globally, the government is concerned on the nature of money that is being used for such investments and whether the same is adequately regulated. In its ongoing efforts of trying to curb black money, we would assume such new policy will encompass necessary restrictions in excess of those present in the extant foreign exchange guidelines.

Real Estate

Affordable housing

In line with the government's plan "Housing for all by 2022", it has been proposed in the Budget that the government in collaboration with the NHB will establish a dedicated Affordable Housing Fund.

In the Union budget 2017-18, the government had granted infrastructure status to affordable housing. However, whether developers of affordable housing would then be entitled to access funding through listed Infrastructure Investment Trusts or through Real Estate Investment Trusts, was not clear. Setting up of the Affordable Housing Fund would make available (a) flexible long-term project loans to developers at lower rates of interest and longer tenure equivalent to the economic life of their assets; and (b) housing loans at subsidized interest rates to home buyers.

This would incentivize the developers to undertake more of such schemes, thereby bridging the gap between the demand and supply of units under the Affordable Housing Scheme. Further, it will also arm the home buyers with funds to fulfill their dream of owning a house incentivizing players on either side of the sector.

Real Estate Incentives

No capital gains tax would be levied in the hands of the buyer/ seller in respect of transaction where the ready reckoner value/ circle rate does not exceed the consideration by more than 5%. By introducing this, the government has sought to minimize hardship on buyers/ sellers of immoveable property where the actual transaction value is lower than the ready reckoner value/ circle rate of such immoveable property due to a variety of factors, including shape of the plot, location, etc.

Investment period in capital gains bond increased

For the purposes of claiming exemption from capital gains tax arising out of sale of long term capital asset, the same will now have to be invested in capital gains bond for a minimum period of 5 years instead of the existing period of 3 years.

Commercial development around railway stations to be included in railways infrastructure

The government has now sought to expand the scope of railways infrastructure to include development of commercial land around railway stations. This would allow developers undertaking commercial development around railway stations to avail flexible structuring of long-term project loans, long-term funding from infrastructure funds at lower rates of interest and longer tenure equivalent to the economic life of their assets.

InvIT in CPSE

By notifying the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 the government has taken necessary measures for development of monetizing vehicles like InvIT and ReITs. The government's proposal to monetize selective CPSE assets using InvITs from next year, coupled with the proposal to expand the scope of railways infrastructure to include development of commercial land around railway stations and legislations such as the Real Estate (Regulation and Development) Act, 2016, would help create a positive sentiment towards the commercial real estate sector.

Insolvency and Bankruptcy Code, 2016

Keeping in with the trend of modifying the IBC in tandem with the demands and exigencies of this new legislation as it unfolds and gets implemented, the Budget has introduced a few changes. Heeding to industry concerns on Minimum Alternative Tax and other tax issues, the Budget has introduced a few changes in the tax regime, which have been captured in detail in the direct tax portions of this report.

Further, imposing more responsibility on the insolvency resolution professional, the Budget proposes to stipulate a requirement for the insolvency resolution professional to verify the return of income in case of a company where an application under IBC has been admitted. This becomes critical, especially in the case of companies which have not been making necessary filings with the tax authorities. Considering that the board of the corporate debtor is suspended, the responsibility being provided to the resolution professional seems to be an obvious decision. There has, however, been a considerable debate over the duties of the resolution professional and the extent of responsibility that is expected of an individual. Under the practical scenario, it seems difficult for one individual to undertake the entire responsibility. Additionally, the question of liability over his actions is a separate issue which needs to be addressed.

ELP Comment

It was expected that the Budget would come out with some clarity on waiver of third party consents/approvals under the insolvency process under the IBC. However, the Budget is silent on the point. The resolution applicants and other interested persons had expected the Budget to provide further relaxations to encourage investment in stressed assets undergoing resolution under the IBC.

Legislative Reforms

Amendment to the Reserve Bank Of India Act, 1934

To provide the RBI an instrument to manage excess liquidity, Section 17 of the RBI Act is being amended to institutionalize an uncollateralized deposit facility by way of the “Standing Deposit Facility Scheme”. Normally when banks run short of money, they borrow funds from the RBI to facilitate transactions at a faster pace. In cases when the banks themselves have surplus funds, they lend it to the RBI at the reverse repo rate that is lower than the repo rate. Prior to the Budget, the RBI had to keep collateral in the form of government bonds for availing such loans from banks. The Standing Deposit Facility Scheme will now help the RBI absorb surplus funds without having to provide the banks collateral in exchange. The Standing Deposit Facility Scheme will largely replace the Market Stabilization Scheme, which uses bonds issued outside the government’s regular borrowings to mop up liquidity.

Amendment to the National Housing Bank Act, 1987

The Budget introduces the amendment to the NHB Act through the Finance Bill, 2018. In conformity with the intention to avoid conflict of ownership and regulatory role, Section 4 of the NHB Act is being amended to record the transfer of the subscribed capital of INR 1,450 crores of the National Housing Bank from RBI to the central government. In light of the aforesaid, relevant amendments by way of the Finance Bill, 2018 are proposed to be made in the NHB Act to transfer all decision-making authority from the RBI to the central government.

Amendment to the Central Road Fund Act, 2000

The government has amended the Central Road Fund Act, 2000 to include a schedule enlisting infrastructure sub-sectors. The aforesaid schedule defines affordable housing to include projects utilizing at least 50% of the total available FAR/FSI for units with carpet are not more than 60 square meters in Article 5(j).

Amendment to the Income-tax Act, 1961 in relation to the real estate sector

The government has amended Section 54EC of the Income-tax Act, 1961 to include land and building in the definition of long-term capital asset and have substituted the existing sub-section (ba) of Section 54EC with the following:

"(ba) "long-term specified asset" for making any investment under this section,—

7. on or after the 1st day of April, 2007 but before the 1st day of April, 2018, means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 but before the 1st day of April, 2018;
8. on or after the 1st day of April, 2018, means any bond, redeemable after five years and issued on or after the 1st day of April, 2018,

by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 or any other bond notified in the Official Gazette by the Central Government in this behalf."

Amendment to the SEBI Act:

Power to levy penalties: Section 11B of the SEBI Act is proposed to be amended to give power to levy penalties in proceedings before them. Currently, the present section does not mandate the power to impose monetary penalties.

Penalty for the violation of regulations in respect of Alternate Investment Funds ("AIF"), Infrastructure Investment Funds ("InVITs") and Real Estate Investment Trusts (ReITs) – The Finance bill proposes to insert Section 15EA in the SEBI Act providing penalty in respect of persons for failure to comply with the regulations made by the SEBI or directions issued by the Board in respect of AIF, InVITs and ReITs. Such penalty shall be of an amount not less than INR 1,00,000 but which may extend to INR 1,00,000 for each day during which such failure continues subject to a maximum of INR 1,00,00,000 or three times the amount of gain made out of such failure, whichever is higher.

Penalty for the violation of regulations in respect of investment advisor or Research Analyst- The Finance bill proposes to insert Section 15EB which provides for a penalty for the failure by an investment adviser and research analyst to comply with the regulations made by SEBI or directions issued by the Board. The penalty shall be an amount of not less than INR 1,00,000 but which may extend to INR 1,00,000 for each day during which such failure continues subject to a maximum of INR 1,00,00,000.

Continuance of proceedings - The insertion of Section 28B of the SEBI Act contemplates the continuance of proceedings after the death of a person in a significant departure from the abatement of proceedings due to the death of a person. The language suggests that the "Legal Representative" shall be liable to pay any sum which a deceased would have been liable to pay, if he had not died. In case of any penalty payable under the SEBI Act, a legal heir shall be liable only in case the penalty has been imposed before the death of the deceased person. The liability of a legal heir is limited to the extent to which the estate of the deceased is capable of meeting the liability.

For the said purpose, “Legal Representative” has been defined to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Amendment to the Securities Contracts (Regulation) Act, 1956

Adherence to SEBI Regulations by Stock Exchange or a Clearing Corporation: Section 23GA is proposed to be inserted which provides for penalty in respect of failure to conduct business in accordance with rules or regulations made by the SEBI or directions issued by it to a Stock Exchange or a Clearing Corporation. Such penalty shall be an amount of not less than INR 5,00,00,000 but which may extend to INR 25,00,00,000 or three times the amounts of gains made out of a failure, whichever is higher
Continuance of proceedings - Section 23JC is proposed to be inserted which provides that a “Legal Representative” shall be liable to pay any sum which the deceased would have been liable to pay if he had not died. However, it has been specified that the Legal Representative shall be liable only in case the penalty has been imposed before the death of the person.

For the said purpose, “Legal Representative” has been defined to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Infrastructure

Introduction

In continuation with the theme of the previous year’s Budget in relation to infrastructure, this year’s Budget lays emphasis on the importance of connectivity. Investment requirements have been estimated to INR 50 lakh crores for increase in the growth in the GDP, connecting and integrating the country with a network of roads, airports, railways, ports and inland waterways and providing good quality services to the people. For the most part, there is a focus on creation of infrastructure and not the upgradation of existing infrastructure or resolution of long-standing issues. Strategic defence concerns along with social development (especially of agricultural communities and rural areas) appear to be the drivers of the announcements made.

Unlike in previous Budget announcements, there was no mention of public-private partnerships or any private participation, other than in relation to contributions to medical centres.

There is also an emphasis on the development of social infrastructure such as healthcare and education, which is a welcome We have set out below sector specific allocations and reforms proposed in this year’s Budget.

Roads

Recognising the importance of the sector towards the growth of the economy and the need to increase connectivity, the Finance Minister proposed an all-time high allocation to the road sector of an amount of INR 62,000 crores

Connectivity

The primary theme of this year's Budget has been maximization of livelihood in the rural areas. In line with this intent, the main focus in terms of the road sector has been on connectivity in the rural areas. Accordingly, the Finance Minister announced that Phase III of the Prime Minister Gram Sadak Yojana would focus on including major link routes which connect habitations to agricultural and rural markets (GrAMs), higher secondary schools and hospitals. Further, INR 14.34 lakh crores which is proposed to be spent in FY 2018-19 for creation of livelihood and infrastructure in rural areas seeks to inter alia create 3.17 lakh kms of rural roads. The Finance Minister also stated that the Government is confident of completing national highways exceeding 9000 km length during 2017-18.

Another important focus of the Budget in terms of connectivity seemed to be to develop infrastructure in border areas for securing India's defences. The Finance Minister announced that under the Bharatmala Pariyojana seamless connectivity of interior and backward areas and borders of the country would be provided to develop about 35,000 kms in Phase-I at an estimated cost of INR 5,35,000 crore.

Monetisation of Assets

The Finance Minister in his Budget Speech proposed that the National Highways Authority of India (NHAI) would be allowed to house mature road projects into a special purpose vehicle and sell them to investors using structures like toll operate transfer (TOT) and Infrastructure Investment Funds. Monetisation of projects was mooted by the Committee on Revisiting and Revitalising Public Private Partnership Model of Infrastructure, chaired by Dr. Vijay Kelkar, in November 2015.

The NHAI recently invited bids for projects on TOT mode. Under the TOT mode, the rights of collection and appropriation of toll on selected national highways are proposed to be auctioned and exclusively assigned to a concessionaire for a period of 30 years. During such tenure, the concessionaire would be responsible for the operation, management and maintenance of the national highways.
It would be interesting to see whether such measures attract the long-term funding required and encourage inflow of foreign investment in the sector.

Toll

In order to ease travelling by road, the Finance Minister stated that the system of collecting toll payments physically by cash at toll plazas is being replaced with Fastags and other electronic payment systems. Toll plazas across the county see time-consuming queues and this move should help make road travel seamless. According to the Finance Minister, the number of Fastags has gone up from about 60,000 in December 2016 to more than 10 lakhs as of the date of the Budget Speech. Further, it was announced that from December 2017 onwards, all class ''M'' and ''N'' vehicles were being sold only with the Fastags. The Government also proposes to introduce a policy to introduce toll system on ''pay as you use'' basis.

Railways

A major focus of this year's Budget has been the strengthening of the railway network, enhancing Railways' carrying capacity and ensuring passenger's safety. For 2017-18, the total capital and development expenditure of the railways has been pegged at INR 1,48,528 crore.

- Additionally, it is proposed that railway lines of 4,000 kms will be commissioned in 2018-19.
- The Budget has proposed 18,000 kilometers of doubling, third and fourth line works and 5000 kilometers of gauge conversion, to eliminate capacity constraints and transform almost the entire railway network into broad gauge.
- The Finance Minister proposed track renewal of over 3600 kms during the current fiscal, to ensure maintenance of track infrastructure.

- The Budget proposed procurement of adequate number of rolling stock – 12000 wagons, 5160 coaches and approximately 700 locomotives during 2018-19.
- The Finance Minister proposed major reforms to enhance passenger safety by announcing a 'Safety First' policy, with allocation of adequate funds under Rashtriya Rail Sanraksha Kosh. Other major steps include increasing use of technology like "Fog Safe" and "Train Protection and Warning System" and eliminating 4267 unmanned level crossings in the broad gauge network in the next 2 years.
- The Budget focuses on redeveloping 600 major railway station by creation of infrastructure for escalators, wi-fi, CCTVs and designing modern train-sets with state-of-the-art amenities and features proposed to be commissioned during 2018-19.
- The Finance Minister proposed budgeting of Government of India's contribution in equity and debt of the metro ventures floated by the State Governments will be streamlined. How this ties in with the Metro Rail Policy, 2017, remains to be seen.

Many of the announcements proposed appear to address safety concerns. Several rail accidents over the last year had highlighted the lack of safety measures and this focus is definitely a welcome step.

Airports

The focus in respect of airports has been on regional connectivity in line with the National Civil Aviation Policy, 2016 (NCAP 2016). One of the objectives of the NCAP 2016 was to enhance regional connectivity through fiscal support and infrastructure development. Pursuant to the NCAP 2016, the Ministry of Civil Aviation launched a regional connectivity scheme known as UDAN (Ude Desk ka Aam Nagrik) which translates to 'let the common man fly'. One of the primary objectives of the UDAN scheme was to facilitate and stimulate regional air connectivity by making it affordable. According to the Finance Minister, the UDAN scheme would connect 56 unserved airports and 31 unserved helipads across the country. As per the Budget Speech, 16 such airports are already operational.

The Finance Minister further stated that in the past three years domestic air passenger traffic grew at 18% per annum and India's airline companies placed orders for more than 900 aircrafts. In order to keep up with such growth, the Finance Minister proposed that India's airport capacity would be expanded by more than five times to handle a billion trips a year. For this purpose, the Government would launch a new initiative named NABH Nirman. The Airport Authority of India's balance sheet would also be leveraged to raise funds for this expansion.

Telecom

The Finance Minister has allocated INR 10,000 crore in 2018-19 for creation and augmentation of Telecom infrastructure.

The Budget proposed that the Department of Telecom will support establishment of an indigenous 5G Test Bed at IIT, Chennai, to harness the benefit of emerging new technologies, particularly the 'Fifth Generation' (5G) technologies and its adoption.

Healthcare

- The Finance Minister announced 2 new initiatives under the Ayushman Bharat Program, aimed at making path breaking interventions to address health holistically, in primary, secondary and tertiary care system covering both prevention and health promotion.
    - **National Health Protection Scheme,** which will cover 10 crore poor and vulnerable families, with approximately 50 crore beneficiaries and provide health insurance cover of INR 5,00,000 per family per year for secondary and tertiary care hospitalisation. The Scheme as contemplated would be the 'world's largest healthcare programme'.

- **Health and Wellness centres,** will be created to provide free essential drugs and diagnostic services. INR 1200 crores have been allocated to create 1,50,000 centers. Contributions through CSR activities and philanthropic institutions by adoption of these centres.
- The Budget proposes allocation of INR 600,00,00,000 for nutritional support of Tuberculosis patients at the rate of INR 500 per month for the duration of their treatment.

The Finance Minister has proposed to set up 24 new Government Medical Colleges and Hospitals by upgrading existing district hospitals. This would result in 1 medical college for every 3 parliamentary constituencies and at least 1 Government Medical College in each State of the country.

Education

At the beginning of his Budget Speech, the Finance Minister highlighted that one of the primary focus of this year's Budget would be on improving the quality of education in the country. The Finance Minister acknowledged that despite managing to get children to schools, the quality of education in India is a cause of serious concern. It may be noted that India enacted the Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE Act) in 2009 making education a fundamental right of every child between the ages of 6 and 14.

Quality of Education, Digital Board

Based on the national survey of over 20 lakh children to assess the ground situation, the Government proposes to devise district-wise strategies for improving the quality of education. Further, the Finance Minister stated that by the year 2022, every block with more than 50% schedule tribe population and at least 20,000 tribal persons, will have an Ekalavya Model Residential School. Ekalavya schools will be on par with Navodaya Vidyalayas and will have special facilities for preserving local art and culture besides providing training in sports and skill development. Admission in Navodaya Vidyalayas is made on the basis of selection test which is designed to ensure that talented children from rural areas are able to compete without facing any disadvantage

The Finance Minister suggested that an integrated B.Ed. programme would be initiated to improve the quality of teachers. As training of teachers is critical for improving the quality of education, the RTE Act was amended in 2017 to provide that teachers who do not possess the minimum qualifications required under the RTE Act acquire such qualifications within 4 years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017. The intent behind this amendment was to enable more than 13 lakh untrained teachers to get trained. In order to upgrade the skills of teachers, a digital platform 'DIKSHA' was recently launched by the Government. DIKSHA is a national digital infrastructure for teachers which seeks to aid in creation of in-class resources, teacher training content and assessment aids.

The Government has mooted that digital intensity in education would gradually be increased in order to move from "black board" to "digital board".

The Finance Minister announced that an initiative named "Revitalising Infrastructure and Systems in Education (RISE) by 2022" with a total investment of INR 1,00,000 crore would be launched in the next four years for increasing investments in research and related infrastructure in premier educational institutions. The Higher Education Financing Agency (HEFA) is proposed to be suitably structured for funding this initiative. The setting up of HEFA was approved by the Union Cabinet in September 2016, pursuant to the Prime Minister's vision of providing additional finance for promoting research in the higher educational institutions.

New Institutes

The Finance Minister stated that the response towards the Government's initiative of setting up Institutes of Eminence has been tremendous. The Government is stated to have received more than 100 applications. In line with such initiative, steps have been taken to set up a specialized Railways University at Vadodara.

The Government now proposes to set up two full-fledged Schools of Planning and Architecture and 18 schools of planning and architecture at the Indian Institute of Technology (IIT) and National Institute of Technology as autonomous Schools. All such entities would be selected on challenge mode. 24 Government Medical Colleges and Hospitals are proposed to be set up by upgrading existing district hospitals in the country. to ensure that there is at least one medical college for every three parliamentary constituencies and at least one Government medical college in each State of the country.

The "Prime Minister's Research Fellows (PMRF)" Scheme is also proposed to be launched this year. Under such scheme, the Government would identify 1,000 best B.Tech students each year and provide them facilities to do Ph.D in IITs and Indian Institute of Science, by giving them a handsome fellowship. The Government hopes that such fellows would voluntarily commit few hours every week for teaching in higher educational institutions.

Power

The Ministry of New and Renewable Energy has set out a capital outlay to INR 10,317 Crores while the Ministry of Power outlay is estimated at INR 53,469 Crores

Although the industry was expecting several reforms given the ambitious targets set by the Government, the pronouncements that related to the power sector were minimal. The finance minister announced that the Government of India would take necessary measures and encourage State Governments to put in place a mechanism to permit ensure the purchase of surplus solar power generated by farmers through solar water pumps by distribution companies or licencees at reasonably remunerative rates. Given the falling prices of solar energy and the spate of tariff disputes with distribution companies, the manner in which this mechanism will function as well as its impact on the solar power industry would need to be seen.

The Budget also mentions adoption of solar rooftops in smart cities.

However, several systemic issues are unaddressed and much needed reforms in the oil and gas sector as well as electricity transmission have been neglected.

Amendments to the Central Road Fund Act, 2000

Interestingly, the Finance Bill, 2018 proposes amendments to the Central Road Fund Act, 2000 such that its scope is expanded to cover infrastructure projects other than roads. The title of the Act itself is proposed to be amended to the 'Central Road and Infrastructure Fund Act, 2000' and the Central Government is now authorized to utilize the Fund created under the Act for other infrastructure including ports, shipyards, airports, inland waterways, railways, urban transportation, electricity generation, transmission and distribution, oil and gas pipelines, water supply, sanitation, sewage treatment, telecommunication, education, hospitals, tourism and affordable housing.

Disinvestment in Public Sector Enterprises

The Finance Minister announced that three public sector general insurance companies namely, National Insurance Company Ltd., United India Assurance Company Limited and Oriental India Insurance Company Limited would be merged into a single insurance entity. The merged entity would subsequently be listed in furtherance of the Government's disinvestment plan. It would be important to ensure that such consolidation is done in a timely and effective manner so as to make the initial public offer fruitful. [The merged entity is likely to have an enormous balance sheet and accordingly a higher risk-retention capacity.

The merger of the aforementioned insurance companies was reportedly proposed earlier in 2017 but wasn't implemented. However, in 2017, as part of its disinvestment exercise, the Government diluted its stake in New India Assurance Company Limited and General Insurance Corporation of India. Both these entities are now listed on the stock exchanges.

The Finance Minister stated that listing of 14 central public sector enterprises (CPSE) on stock exchanges has been approved by the Government and that the process of strategic disinvestment in 24 CPSEs has been initiated including that of Air India. The privatization of Air India has been on the Government's mind for a while now. In January 2018, the foreign direct investment norms were amended to permit foreign airlines to own upto 49% of Air India's paid-up capital. Hopefully, the Government's disinvestment plans will fructify and help meet the Finance Minister's disinvestment target of INR 80,000 crore for FY 2018-19.

The Finance Minister also announced that the Government would initiate monetizing select CPSE assets using Infrastructure Investment Trusts (InvITs). It would be interesting to see the assets that are selected to be monetized under this proposal and whether such monetized CPSE assets attract significant investments.

Private Equity & Venture Capital

Set out below are the key takeways on policy level changes that are expected as per the announcements made during today's budget and have a bearing on private equity and venture capital industry.

(ReITs) and (InvITs)

The Finance Minister has proposed to monetize select Central Public Sector Enterprises (CPSE) assets using InvIts from next year.

The Finance minister has appreciated the efforts of the Government and Market Regulators for development of ReITs and InvITs. The above change would further popularize ReITs and InvITs.

Stamp Duty Regime on Financial Securities Transactions

The Finance Minister has suggested that the Government will undertake reform measures with respect to stamp duty regime on financial securities transactions in consultation with the States and make necessary amendments the Indian Stamp Act.

Hybrid Instruments

The Government intends to evolve a policy for Hybrid Instruments so as to attract foreign investments in certain sectors.

Long-term Capital Gains Tax

Long-term capital gains of 10% imposed for gains exceeding Rs. 1 lakh without allowing the benefit of indexation. Gains upto March 31, 2018 to be grandfathered. No change to the rates of short term capital gains tax.

Start-ups and Fintech

Group of investors in Ministry of Finance will be examining policy and measures for Fintech sector. It was also announced that the Government to work out additional measures to strengthen environment of growth and operation for Angel investors and Venture Capital investors.

Although the announcement promise many changes and potential measures, the industry will have to wait for them to be announced and implemented. The private equity and venture capital sector may feel there were much expectation for immediate relief on some of the burning issues, such as, angel tax to be taken away, allow management expenses to be capitalised, permitting securities that can provide valuation adjustments for angel investment, etc which seems to have remained unaddressed.

Glossary of Terms

Abbreviation	Meaning
AO	Assessing Officer
AOP	Association of persons
AY	Assessment Year
AMT	Alternate Minimum Tax
ARE	Alternative Reporting Entity
BDT	Buy-back Distribution Tax
BEPS	Base Erosion and Profit Shifting
BOI	Body of Individuals
DDT	Dividend Distribution Tax
DTAA or Tax Treaty	Double Taxation Avoidance Agreement
HUF	Hindu Undivided Family
ICDS	Income Computation Disclosure Standards
Ind AS	Indian Accounting Standards
IBC	Insolvency and Bankruptcy Code, 2016
IFSC	International Financial Service Centre
INR	Indian National Rupee
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
MLI	Multilateral Instrument
OECD	Organization for Economic Co-operation and Development
PAN	Permanent Account Number
PE	Permanent Establishment
STT	Securities Transaction Tax
TDS	Taxes Deducted at Source
UEN	Unique Entity Number
w.e.f.	with effect from

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