Union Budget 2015 Indirect Tax Proposals

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Key Takeaways

- ✓ A definitive step towards GST implementation from 1st April 2016
- ✓ Standard excise duty rate increased to 12.5% from existing 12.36% (including cess)
- ✓ Education Cess and Secondary & Higher Education Cess on excise and service tax exempted
- ✓ Service tax rate increased to 14% from existing 12.36% (including cess)
- ✓ Enabling provision for levy of 'Swachh Bharat Cess' @ 2% on taxable value
- ✓ No change in median rate of basic customs duty – which remain unchanged at 10%
- ✓ Rationalization of inverted duty structure by way of reduction in customs duty
- ✓ Time limit for CENVAT credit availment enhanced from 6 months to 1 year
- ✓ Swift Registration process and digitization of records

Goods and Service Tax

Goods and Service Tax ('GST')

- ✓ GST will put in place a state-of-the-art indirect tax system by 1st April, 2016

- ✓ Relevant extract of the Finance Minister Speech:

"We need to revive growth and investment to ensure that more jobs are created for our youth and benefits of development reach millions of our poor. We need an enabling tax policy for this. I have already introduced the Bill to amend the Constitution of India for Goods and Services Tax (GST) in the last Session of this august House. GST is expected to play a transformative role in the way our economy functions. It will add buoyancy to our economy by developing a common Indian market and reducing the cascading effect on the cost of goods and services. We are moving in various fronts to implement GST from the next year"

Service Tax

Service tax – Legislative changes..

Increase in rate of service tax

- ✓ Rate of service tax to be increased from 12% (effective 12.36% including Cess) to 14% subsuming the cesses - effective from date to be Notified by the Government
- ✓ Exemption from Education Cess and Secondary & Higher Education Cess effective from date to be Notified by the Government

Amendment in definition of service

- ✓ An Explanation is being proposed in the definition of "service" to provide for Service Tax on activities undertaken by chit fund foremen in relation to chit, lottery distributors and selling agents, in relation to lotteries

Service tax – Legislative changes

<u>Widen the scope of 'consideration'</u>

- ✓ Explanation to section 67 -valuation of Taxable services has been amended for the purpose of charging service tax on all reimbursable expenditure or cost incurred and charged by the service provider
- ✓ The amendment is brought to negate the impact of Intercontinental Consultants and Technocrats Pvt. Ltd. vs. Union of India & ANR (2012-TIOL-966-HC-DEL-ST),
- ✓ Further, consideration also includes the amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, the discount received

Changes in Negative List

Admission to entertainment event and access to amusement facility

- ✓ Entry pertaining to Admission to entertainment event and access to amusement facility proposed to be omitted and henceforth service tax be charged on these services

- ✓ Service tax to be levied on service by way of admission to specified entertainment event if the amount charged is more than Rs. 500 for right to admission to such an event

Process amounting to manufacture or production of goods

- ✓ Proposed amendment to exclude any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption. Accordingly, Service Tax shall be levied on such services.

Services provided by Government or Local Authority

- ✓ All services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List, shall be liable to service tax.

Service tax – Penal provisions

Penal provisions

- ✓ Section 76 - Cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax
  - ➢ Penalty capped at 10% of service tax
  - ➢ No penalty if service tax & interest paid within 30 days from the date of service of SCN
  - ➢ If Service tax, interest & penalty paid within 30 days from the date of receipt of order- reduced penalty of 25% of penalty imposed in the order
- ✓ Section 78 - Cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax
  - ➢ Penalty at 100% of service tax
  - ➢ 15% penalty of service tax if service tax & interest paid within 30 days from the date of service of SCN
  - ➢ If Service tax, interest & penalty paid within 30 days from the date of receipt of order- reduced penalty of 25% of the service tax

  Penalty shall be reduced if the duty amount gets reduced in any appellate proceeding. 25% of reduced penalty shall be payable if service tax, interest and reduced penalty is paid within 30 days of such appellate order

Service tax – Penal provisions..

Transitional penalty provision

- ✓ Amended provisions of sections 76 and 78 shall apply to cases where either no notice is served or notice is served but no order has been issued before the date of enactment of the Finance Bill, 2015
- ✓ In respect of cases covered by sub-section (4A) of section 73, if no notice is served or notice is served but no order has been issued before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service Tax amount.

Section 80 – Waiver of penalty

- ✓ This saving clause has been deleted, which was providing relief for non imposition of penalty in case of reasonable cause for failure to pay tax.

Service tax - Exemptions

- ✓ All ambulance services
- ✓ Life insurance service provided by way of Varishtha Pension Bima Yojna
- ✓ Service provided by a Common Effluent Treatment Plant operator for treatment of effluent
- ✓ Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables
- ✓ Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve
- ✓ Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of it's members
- ✓ GTA services when provided for transport of export goods by road from the place of removal to a land customs station

(Above changes are effective from 1 April 2015)

Review of Exemptions

- ✓ Exemption presently available on specified services of construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority, now it shall be limited only to few specified services
- ✓ Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn
- ✓ Exemption to services provided by a performing artist in folk or classical art form will be limited only to such cases where amount charged is upto Rs 1,00,000 for a performance
- ✓ Transportation of Foodstuff viz tea, coffee, jaggery, sugar, milk products, edible oil are now taxable
- ✓ Exemptions are being withdrawn on the following services: (a) services provided by a mutual fund agent to a mutual fund or assets management company, (b) distributor to a mutual fund or AMC, (c) selling or marketing agent of lottery ticket to a distributor

Review of Exemptions..

- ✓ Intermediate production process of alcoholic liquor for human consumption on job work is now taxable (effectively from the date of enactment of the Finance Bill, 2015)
- ✓ The service provided by a commission agent located outside India to an exporter located in India –is not relevant – hence rescinded (to be effective immediately)

(Exemptions related changes are effective from 1 April 2015 (unless otherwise specified)

Abatements

Particular	Existing Taxable	Proposed Taxable
Goods transport by road by a goods transport agency	25%	30%
Rail transport for Goods	30%	30%
Goods transport by vessels	40%	30%
Air Transport of passenger other than economy class	40%	60%
Services provided in relation to chit	70%	100%

The above changes are effective from 1 April 2015

Reverse Charge Mechanism

- ✓ Manpower supply/ security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge from existing partial reverse charge

- ✓ Services provided by, (i) mutual fund agents, mutual fund distributors; and (ii) agents of lottery distributor are being brought under reverse charge

(Above change are effective from 1 April 2015)

Swachh Bharat Cess

Levy of 'Swachh Bharat Cess'

- ✓ An enabling provision is being incorporated in the Finance Bill, 2015 to empower the Central Government to impose a Swachh Bharat Cess
- ✓ Swachh Bharat Cess will be levied on all or any of taxable services that will come into effect from a date to be notified
- ✓ The details of coverage of this Cess would be notified in due course.

CENVAT Credit

CENVAT Credit

- ✓ CENVAT credit time limit for availment has been increased to 1 year from 6 months
- ✓ Goods can be directly sent to Job worker location – 180 days time limit will applicable from the date of receipt of goods by job worker
- ✓ Increase in the time limit for return of Capital Goods from a job worker from six months to two years
- ✓ For the purpose of Rule 6 (CENVAT credit with respect to exempted goods and services)- exempted goods include non excisable goods and provision relating to reversal for CENVAT Credit in rule 6, would also applicable to non-excisable goods– value would be - invoice value if not available as per Valuation Rules
- ✓ CENVAT Credit of Service Tax paid under partial reverse charge by the service receiver is available on payment of service tax to the Government even if value of service and service tax not paid to service provider (effective from 1 April 2015)
- ✓ Export of goods defined to means any goods which are to be taken out of India to a place outside India, hence, restricting refund of CENVAT credit for goods supplied to SEZ, EOU, etc
- ✓ Provisions with respect to First stage dealer and second stage dealer for maintaining records and issue invoice would equally applicable to importer

CENVAT Credit..

New provision for recovery of CENVAT credit wrongly taken or erroneously refunded.

Scenario	Implications
CENVAT credit availed but not utilized	Recovery as per Section 11A CEA/section 73 of Service tax, Interest not applicable
CENVAT credit availed and utilized	Recovery as per Section 11A & 11AA CEA/section 73 & 75 of Service tax, Interest applicable

Credit shall be deemed to have been taken on last date of the month

Mechanism for utilization of CENVAT credit provided for the first time and it would be presumed:

(i) the opening balance of the month has been utilised first;

(ii) credit admissible in terms of these rules taken during the month has been utilised next;

(iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.

(effective from 1 March 2015)

Utilization of CENVAT credit is based on FIFO basis

Central Excise

Central Excise

- ✓ Effective standard ad valorem rate of duty of excise increased from 12.36% to 12.50% by subsuming Education Cess and Secondary and Higher Education Cess (effective from 01 March, 2015)

- ✓ Provide for imposition of penalty of INR 100 per day, subject to a maximum of INR 20,000 for a period of delay in submission of ER-4 (Annual Financial Information Statement)and ER-7(Annual Installed Capacity Statement) (effective from 01 March, 2015)

- ✓ The rebate / refund claims of the assessee, as pending with the authorities, can now be adjusted against amount of penalty imposed on the assessee in addition to the amount of duty and interest liability of the assessee.

Penalty provisions

In cases not involving fraud or collusion or wilful mis-statement etc… (Under Sec. 11 AC)	In cases involving fraud or collusion or wilful mis-statement etc… (Under Sec. 11AC)
Penalty not exceeding 10% of the duty so determined or Rs. 5000 whichever is higher	Penalty shall be 100% of duty amount involved
If duty and interest is paid before issuance of notice or within 30 days of issuance of notice, then no penalty is payable.	If duty and interest is paid within 30 days of issuance of notice, then penalty will be 15% to be paid provided that such reduced penalty is also paid within 30 days of the date of communication of notice
If the duty and interest is paid within 30 days of the date of communication of the order, then reduced penalty equal to 25% of the penalty imposed in the order is payable provided that such reduced penalty is also paid within 30 days of the date of communication of such order	If the duty and interest is paid within 30 days of the date of communication of the order, then reduced penalty equal to 25% of the penalty imposed in the order is payable provided that such penalty is also paid within 30 days of the date of communication of such order
Penalty shall be reduced if the duty amount gets reduced in any appellate proceeding. 25% of reduced penalty shall be payable if service tax, interest and reduced penalty is paid within 30 days of such appellate order	

Procedural aspects

- ✓ Provision for issue of digitally signed invoices and preservation of records in electronic form by a manufacturer
- ✓ Registration process under Central Excise and Service tax has been simplified
- ✓ Registration to be granted within two working days of the receipt of a duly completed application form.
- ✓ Verification of documents and premises, as the case may be, shall be carried out post facto
- ✓ Advance ruling facility extended to resident firms (limited liability partnership, limited liability partnership which has no company as its partner, the sole proprietorship, One Person Company)

Customs

Customs

- Median rate of customs duty remain unchanged at 10%
- Effective customs duty rate increased marginally on account of increase in CVD rate
- Rationalization of inverted duty structure by way of reduction in basic customs duty
- Reduction in SACD on inputs to address problem of CENVAT Credit accumulation
- Penalty provisions are also rationalized on the same line with Central Excise

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