

ANALYSIS OF UNION FINANCE BILL 2015

[Personal & Private Circulation bearing no opinion or advice]

Contents:

	Page No.
➤ Quick key features of the budget except tax proposals	2
➤ Service Tax Proposals	3-10
➤ Income Tax Proposals	11-27

Rating of Union Budget 2015:

The author and his team rates this Union Budget as 6.5 out of 10 after considering the challenges before the Finance Minister, his future plans, long terms vision and current situation of the Indian Economy.

Positive Features: There are some positive indication/ proposal such as, abolition of Wealth Tax Act, Indication for the GST roll out, law on Bankruptcy for the business ease, NBFC's status of Financial Institutions, Gold Coins with Ashoka Chakra, Gold Monetization, Law for curbing the black money, Benami Transactions Act, Special privileges for the upliftment of the state of Jammu & Kashmir, Andhra Pradesh Telangana and North-Eastern States, setting-up of AIIMS, IIMs, IITs and other institutions in various parts of India.

Drawback: However, some of the expectations have been left high and dry, such as no reforms for Banking Sector, no direct relief to the middle class society, no direct reforms for the Infrastructure sector and no penal provisions for the bank defaulters.

Key Features of the Union Finance Budget 2015:

- ✓ GST will be put in place in the indirect tax system by 1st April, 2016.
- ✓ Need to monitor subsidy leakages not the subsidies.
- ✓ Comprehensive Bankruptcy Code with global standards.
- ✓ PM Suraksha Bima Yojana for accidental death of Rs. 2 Lacs for a premium of Rs. 12 per annum.
- ✓ Atal Pension Yojana for providing pensions.
- ✓ PM Jeevan Jyoti Bima Yojana to cover natural and accidental death of Rs 2 Lacs for a premium of Rs 330/- for 18-50 years age group.
- ✓ Issuance of gold coins with Ashoka Chakra and Gold monetization scheme for earning interest on metals and for obtaining loans on precious metals.
- ✓ Visa on arrival to be increased to 150 countries in stages.
- ✓ Various IIT's, IIMs, AIIMS and other institutions in different parts of the country.
- ✓ Special schemes for the upliftment of J&K and North Eastern parts of the country.
- ✓ Amendment in the RBI Act to provide for a Monetary Policy Committee.
- ✓ GDP growth for 2014-15 is 7.4% and expected growth for 2015-16 will be between 8 to 8.5%.
- ✓ Non-Plan expenditure estimates for the Financial Year are estimated at Rs. 13,12,200 crore. Plan expenditure is estimated to be Rs. 4,65,277 crore, which is very near to the R.E. of 2014-15. Total Expenditure has accordingly been estimated at Rs. 17,77,477 crore.
- ✓ Gross Tax receipts are estimated to be Rs. 14,49,490 crore. Devolution to the States is estimated to be Rs. 5,23,958 crore. Share of Central Government will be Rs. 9,19,842 crore. Non Tax Revenues for the next fiscal are estimated to be Rs. 2,21,733 crore.
- ✓ With the above estimates, fiscal deficit will be 3.9 per cent of GDP and Revenue Deficit will be 2.8 per cent of GDP.
- ✓ Expected rate of Corporate Tax from 30% to 25% over the next 4 years.
- ✓ New law on black money:
 - Concealment of income and assets and evasion of tax in relation to foreign assets will be prosecutable with punishment of rigorous imprisonment upto 10 years and penalty for such concealment of income and assets at the rate of 300% of tax.
 - Non filing of return or filing of return with inadequate disclosure of foreign assets will be liable for prosecution with punishment of rigorous imprisonment up to 7 years.
 - Date of Opening of foreign account would be mandatorily required to be specified by the assessee in the return of income.
- ✓ For curbing domestic black money, a new Benami Transactions (Prohibition) Bill will be introduced in the Parliament.
- ✓ Prohibition on acceptance or payment of an advance of Rs. 20,000 or more in cash for purchase of immovable property.
- ✓ Quoting of PAN is being made mandatory for any purchase or sale exceeding the value of Rs. 1 lakh.
- ✓ General Anti Avoidance Rule (GAAR) is deferred for 2 more years.
- ✓ Wealth tax Act is abolished.
- ✓ Education Cess and the Secondary and Higher Education Cess in removed from Central Excise duty and the general rate of Central Excise Duty of 12.36% including the cess is being rounded off to 12.5%.
- ✓ The rate of service tax plus education cess from 12.36% is consolidated at the rate of 14%.

Service Tax Proposals

Rate of Service Tax (Refer Clause 106 of Bill):

Date of Applicability: To be notified by the Central Government post enactment of the Bill.

Provision: Amendments are proposed in Section 66B of the Finance Act, 1994, Section 95 of Finance Act 2004 and Section 140 of the Finance Act 2007. The rate of Service Tax is being increased from 12% plus Education Cess to 14%. The ECess and SHEC shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cess) to 14%, subsuming the cess. Till the time the revised rate comes into effect, the 'Education Cess' and 'Secondary and Higher Education Cess' will continue to be levied in Service Tax.

Comment: *The new rate shall be come into force after the finance bill is approved from the Parliament. Till such time, old rate shall be continued with Cess.*

Enabling provision for levy of "Swachh Bharat Cess" (refers Chapter VI/Clause 117 of the Bill):

Date of Applicability: To be notified by the Central Government after the enactment of the Bill.

Provision: An enabling provision is being incorporated in the Finance Bill, 2015 (Chapter VI/Clause 117) to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess shall be levied from such date as may be notified by the Central Government after the enactment of the Finance Bill, 2015. The details of coverage of this Cess would be notified in due course.

Comment: *In view of the apparent error in drafting, the clarification about the provision is nictitated, as the word "Cess" means tax on tax however the chargeability is proposed on the taxable services and not on tax amount. It seems that the rate can be notified as 16% for specified sectors.*

Changes in Negative List (refer Clause 105 and 107 of the Bill):

Date of Applicability: The changes in the Negative List shall come into effect from a date to be notified later, after the enactment of the Finance Bill, 2015.

Provision: The changes proposed in the Negative List in Section 66D are as follows:

1. From section 66D (j), "admission to entertainment event or access to amusement facility" is being omitted from. Consequently, from section 65B(9) the definitions of "amusement facility" and from section 65B(24) the definitions of "entertainment event" are also being omitted.

The implication of these changes is as follows:

- Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.
- Service tax to be levied on service by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event, if the amount charged is more than Rs. 500 for right to admission to such an event. However, the existing exemption, by way of the Negative List entry, to service by

way of admission to entertainment event, namely, exhibition of cinematographic film, circus, recognized sporting event, dance, Theatrical performance including drama and ballet shall be continued, through the route of exemption.

2. Under Section 66D(f), service by way of any process amounting to manufacture or production of goods [section 66D (f)] is being pruned to exclude any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing / job work for production of potable liquor for a consideration.

Comment: Consequent to imposition of Service Tax levy on service by way of manufacture of alcoholic liquor for human consumption, an amendment is being made in the entry at S. No. 30 of notification No. 25/12-ST to exclude carrying out of intermediate production process of alcoholic liquor for human consumption on job work from this entry.

3. Presently, services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66D, are covered by the Negative List. Service Tax applies on the "support service" provided by the Government or local authority to a business entity. An enabling provision is being made, by amending section 66D (a)(iv), to exclude all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of "support service" [section 65 B (49)] is being omitted. Accordingly, as and when this amendment is given effect to, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any other entry in the Negative List, shall be liable to service tax.

Amendments in Chapter V of the Finance Act, 1994:

Date of Applicability: The stated changes in the Finance Act, 1994, shall get incorporated in the said Act on the day the Finance Bill, 2015 is enacted.

Provision:

1. Under section 65B(26A), new definition of the term "government" is being incorporated in the Act. (Refer Clause 105 of the Bill).
2. The intention in law has been to levy Service Tax on the services provided by:
 - A chit fund foremen by way of conducting a chit.
 - B Distributor or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.

However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld. An Explanation is being inserted in the definition of "service" to specifically state the intention of the legislature to levy Service Tax on activities undertaken by chit fund foremen in relation to chit, and lottery distributors and selling agents, in relation to lotteries [section 65 B (44)]. Further, an explanation is being added in entry (i) of section 66D to specifically state that these activities are not covered by the Negative List (Refer Clauses 105 and 107 of the Bill).

3. Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such services. An illustration is being incorporated in this section to exemplify the scope of this provision. As illustrated, reference to service provided by the Reserve Bank of India (RBI), in section 66D (b) does not include any agency service provided by other banks to RBI, as such agency services are input services used by RBI for provision of its main service. Accordingly, banks providing agency service to or in relation to services of RBI, are liable to pay Service Tax on the agency services so provided by virtue of the existing section 66F (Refer Clause 108 of the Bill).

4. (Refer Clause 109 of the Bill) Section 67 prescribes for the valuation of taxable services. It is being prescribed specifically in this section that consideration for a taxable service shall include:

- all reimbursable expenditure or cost incurred and charged by the service provider. The intention has always been to include reimbursable expenditure in the value of taxable service. However, in some cases courts have taken a contrary view. Therefore, the intention of legislature is being stated specifically in section 67.
- amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

Comment: Now the reimbursement cost incurred by the service provider and charged to the service recipient is subject to service tax as clarified by the provision.

5. (Refer Clause 110 of the Bill) Section 73 is being amended in the following manner:

- (c) a new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73; and
- (d) sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records is being omitted.

Comment: Now service tax recovery proceedings can be initiated without service of notice and the penalty reduction provisions are also omitted on true and complete details, this seems to be an undue hardship on the assessee.

6. (Refers clause 111 of the Bill) Section 76 is being amended to rationalize the provisions relating to penalties, in cases not involving fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner:

1. Penalty not to exceed 10% of Service Tax amount involved in such cases;
2. no penalty is to be paid if Service Tax and interest is paid within 30 days of issuance of notice under section 73 (1);
3. a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and
4. if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

Comment: Reduction in penalty is favorable to the assessee. It reduces the hardship slightly and also helps in revenue collection for department and can help in reducing further litigations.

7. (Refer Clause 112 of the Bill) Section 78 is being amended to rationalize penalty, in cases involving fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner:

- Penalty shall be hundred per cent of Service Tax amount involved in such cases;
- a reduced penalty equal to 15% of the Service Tax amount is to be paid if Service Tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;
- a reduced penalty equal to 25% of the Service Tax amount, determined by the Central Excise officer by an order, is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and

- If the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if Service Tax, interest and reduced penalty is paid within 30 days of such appellate order.

Comment: *Reduction in penalty is favorable to the assessee. It reduces the hardship slightly and also helps in revenue collection for department and can help in reducing further litigations.*

8. (Refers Clause 113 of the Bill) A new section 78B is being inserted to prescribe, by way of a transition provision, that,-

- amended provisions of sections 76 and 78 shall apply to cases where either no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015; and
- in respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service Tax amount.

Comment: *Since the amendments of 76 and 78 applies after the enactment of this act, so the pending cases if adjourned.*

9. (Refer Clause 114 of the Bill) Section 80 that provided for waiver of penalty in certain circumstances is being omitted.

Comment: *This is undue hardship for the honest and bonafide assessee and will also raise litigation issues but helpful for government to increase revenue.*

10. (Refer Clause 115 of the Bill) Section 86 is being amended to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebates of Service Tax, shall lie in terms of section 35EE of the Central Excise Act. It is also being provided that all appeals filed in Tribunal after the date the Finance Act, 2012 came into effect and pending on the date when the Finance Bill, 2015 receives assent of the President shall be transferred and dealt in accordance with section 35EE of the Central Excise Act.

Comment: *This is to reduce the burden of Appellate authorities related to specific litigations of rebate.*

Withdrawal of Certain Exemptions:

1. Exemptions are being withdrawn on the following services (S. No 29 of notification No. 25/12-ST):

- 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.

Comment: *Service Tax on these services shall be levied on reverse charge basis.*

Date of Applicability: 01.04.2015

2. Exemption is being withdrawn on the following service (S. No. 32 of notification No. 25/12-ST):

- (ii) Departmentally run public telephone;
- (iii) Guaranteed public telephone operating only local calls;
- (iv) Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued.

Date of Applicability: 01.04.2015

3. Existing exemption, vide notification No. 42/12-ST dated 29.6.2012, to the service provided by a commission agent located outside India to an exporter located in India is being rescinded with immediate effect. This exemption has become redundant in view of the amendments made in law in the previous budget, in the definition of "intermediary" in the Place of Provision of Services Rules, making the place of provision of a service provided by such agents as outside the taxable territory.

Date of Applicability: 01.03.2015

4. 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 (vide S. No. 12 of the notification No. 25/12-ST) shall be limited only to:

- (iii) a historical monument, archaeological site or remains of national importance, archaeological excavation or antiquity;
- (iv) canal, dam or other irrigation work; and
- (v) pipeline, conduit or plant for (i) water supply (ii) water treatment, or sewerage treatment or disposal.

Comment: *Exemption to other services presently covered under S. No. 12 of notification No. 25/12-ST is being withdrawn.*

Date of Applicability: 01.04.2015

5. Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn (S. No 14 of the notification No. 25/12-ST).

Comment: *The other exemptions covered under S. No. 14 of notification No. 25/12-ST shall continue unchanged.*

Date of Applicability: 01.04.2015

6. Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is upto Rs 1,00,000 for a performance (S. No 16 of notification No. 25/12-ST).

Date of Applicability: 01.04.2015

7. Exemption to transportation of food stuff by rail, or vessels or road will be limited to food grains including rice and pulses, flour, milk and salt. Transportation of agricultural produce is separately exempt, and this exemption would continue (S. Nos. 20 and 21 of notification No. 25/12-ST).

Date of Applicability: 01.04.2015

Exemptions:

Date of Applicability: 01.04.2015

Provision:

1. Any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services. (Amended in the entry at S. No. 2 of notification No. 25/12-ST refers).

2. Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted. (Amendment in entry at S. No. 26A of notification No. 25/12-ST refers)

3. Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted. (New entry at S. No. 43 of notification No. 25/12-ST).

4. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted. (New entry at S. No. 44 of notification No. 25/12-ST).

5. Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted. These services when provided by the Government or local authority are already covered by the Negative List. (New entry at S. No. 45 of notification No. 25/12-ST).

6. 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 its members is being exempted. (New entry at S. No. 46 of notification No. 25/12-ST).

7. Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS). (Amendment in notification No. 31/12-ST refers).

8. Service by way of right to admission to:

- A. exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.
- B. recognized sporting events.
- C. concerts, pageants, award functions, musical performances or sporting events not covered by S. No. ii, where the consideration for such admission is upto Rs. 500 per person. (New entry 46 of notification No. 25/2012-ST and clause (zab) of definitions in the said notification)

Date of Applicability: *These changes shall be made effective from the date the amendments being made in the Negative List concerning the service by way of admission to entertainment events come into effect.*

Abatements:

Date of Applicability: 01.04.2015

Provision:

1. At present, service tax is payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency and 40% for goods transport by vessels. The conditions prescribed also vary. A uniform abatement is now being prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non availment of Cenvat Credit on inputs, capital goods and input services.

Comment: 30% taxable portion of service on transportation of goods by vessels, road or by rail without availment of cenvat credit.

2. At present, Service Tax is payable on 40% of the value of air transport of passenger for economy as well as higher classes, e.g. business class. The abatement for classes other than economy is being reduced and Service Tax would be payable on 60% of the value of such higher classes.

Comment: 40% taxable portion of service in case of economy class and 60% in case of higher classes.

3. Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would be entitled to take Cenvat Credit.

Reverse Charge Mechanism:

Date of Applicability: 01.04.2015

Provision:

1. Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge. Presently, these are taxed under partial reverse charge mechanism.

Comment: 100% Reverse charge on service of Manpower supply and security services. Earlier it was partial charge.

2. Services provided by:

- (A) mutual fund agents, mutual fund distributors; and
- (B) agents of lottery distributor

are being brought under reverse charge consequent to withdrawal of the exemption on such services. Accordingly, Service Tax in respect of mutual fund agent and mutual fund distributor services shall be paid by the assets management company or, as the case may be, by the mutual fund receiving such services. In respect of agents of lottery, Service Tax shall be paid by the distributor of lottery.

Service Tax Rules:

Provisions:

1. Rule 2 of the Service Tax Rules, 1994 and notification No. 30/2012-ST dated 20.6.2012: In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator.

Aggregator: "aggregator" means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;

Brand Name and trade name: "brand name or trade name" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person;

Date of Applicability: This change comes into effect immediately i.e., w.e.f. 1st March, 2015.

2. Rule 4 is being amended to provide that the CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration in service tax. It has also been prescribed that henceforth registration for single premises shall be granted within two days of filing the application.

Date of Applicability: As per the order no. 01/2015 dated 28.02.2015. w.e.f 01.03.2015.

3. A provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC. (rule 4, 4A and 5).

Comment: This will ease the process of keeping books of accounts and maintaining records in paperless form.

Date of Applicability: After the CBEC specify the procedure in this regards.

4. Rule 6 (6A) which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted consequent to the amendment in section 73 for enabling such recovery.

Date of Applicability: This change will come into effect from the date of enactment of the Finance Bill, 2015.

5. In respect of certain services like money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent, the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994. Consequent to the upward revision in Service Tax rate, the said alternative rates shall also be revised proportionately. Amendments to this effect have been proposed in the Service Tax Rules.

Date of Applicability: The amendments specified in para 11.5 shall come into effect as and when the revised Service Tax rate comes into effect.

Cenvat Credit Rules, 2004:

Provision:

1. Rule 4(7) is being amended to allow Cenvat Credit of Service Tax paid under partial reverse charge by the service receiver without linkage to the payment to the service provider.

Date of Applicability: This change will come into effect from 1.4.2015.

2. The period for taking Cenvat Credit is being extended from six months from the date of invoice to one year from the date of invoice.

Date of Applicability: This change will come into effect from 01.03.2015.

Advance Rulings:

1. The facility of Advance Ruling is being extended to all resident firms by specifying such firms under section 96A (b)(iii) of the Finance Act, 1994. (Notification No. 9/2015-ST, dated 1.3.2015 refers).

2. "Firm" shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932, and includes:

- the limited liability partnership as defined in clause (n) of sub-section (1) of the section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or
- limited liability partnership which has no company as its partner; or
- the sole proprietorship; or
- One Person Company.

Further "sole proprietorship" means an individual who engages himself in an activity as defined in sub-clause (a) of section 96A of the Finance Act, 1994.

"One Person Company" means as defined in clause (62) of section 2 of the Companies Act, 2013.

Comment: Earlier only companies were cover but now with the extension of firm, almost all the assesseees are covered under advance ruling.

Income Tax Proposals

Rates of Income Tax Including Surcharge and Cess (Refer clause 2 and First Schedule of the bill):

- There is no change in the basic rates of Income tax for any assessee.
- Further, there is no change in the basic rates of Minimum Alternative Tax, Alternate Minimum Tax and Dividend Distribution Tax.
- There is no change in the chargeability of Ecess and SHEC.
- There is an increase in Surcharge by 2% on the "super rich" and the effect of same on various assessees is as below:
 - o The rates of surcharge in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act shall be at the rate of 12% of such income tax in case of a person having a total income exceeding one crore rupees. However the benefit of Marginal relief shall be available.
 - o The rates of surcharge in case of co-operative societies, Firms, Local Authorities shall be at the rate of 12% of such income tax in case of a person having a total income exceeding one crore rupees. However the benefit of Marginal relief shall be available.
 - o The rates of surcharge in the case of domestic companies are categorised as below:
 - Surcharge at the rate of 7% shall be levied in case of a domestic company if the total income of the domestic company exceeds Rs. 1 crore but does not exceed Rs. 10 crore. The surcharge at the rate of 12% shall be levied if the total income of the domestic company exceeds ten crore rupees.
 - In case of companies other than domestic companies, the existing surcharge of 2% shall continue to be levied if the total income exceeds one crore rupees but does not exceed ten crore rupees. The surcharge at the rate of 5% shall continue to be levied if the total income of the company other than domestic company exceeds ten crore rupees.

In other cases (including sections 115-O, 115QA, 115R or 115TA) the surcharge shall be levied at the rate of 12%.

EXEMPTIONS UNDER SECTION 10 AND 11:

Section 2(15). Definition of charitable purpose in the Income-tax Act (Refer clause 3 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: 'yoga' is considered as a specific category in the definition of charitable purpose on the lines of education.

Further, the definition of charitable purpose to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

- (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year .

Comment: *The amendment in the proviso and removal of threshold limit of commercial transactions and insertion of % of gross receipts is favourable for big organisations but not favourable to small charitable organisations as earlier they have the limit of Rs 25 lacs but now 20% of gross receipts.*

Section 11, Accumulation of Income by charitable trusts and institutions (Refer clause 8 & 9 of the bill):

Date of Applicability: This amendment will take effect from AY 2016-17.

Provision: Under the provisions of section 11 of the Act, the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. While 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions that such person submits the prescribed Form 10 to the assessing Officer in this regard and the money so accumulated or set apart is invested or deposited in the specified forms or modes. If the accumulated income is not applied in accordance with these conditions, then such income is deemed to be taxable income of the trust or institution.

In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, it is proposed to amend the Act to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act for the fund or institution. In case the Form 10 is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income.

Comment: *Declaration under Section 11(2), in Form 10 earlier, need to be submitted now before the due date of filing of return otherwise no carry forward/accumulation of unspent grant shall be allowed and hence taxed in the hands of trust/organization. Earlier, this declaration can be provided even at the time of assessments.*

Section 10(23C), Furnishing of return of income by universities and hospitals (Refer clause 34 and 63 of the bill):

Date of Applicability: This amendment will take effect from AY 2016-17.

Provision: Under the provisions of section 10 of the Act, exemption under sub-clause (iiiab) and (iiic) of clause (23C), subject to specified conditions, is available to such university or educational institution, hospital or other institution which is wholly or substantially financed by the Government.

Under the existing provisions of section 139, all entities whose income is exempt under clause (23C) of section 10, other than those referred to in sub-clauses (iiiab) and (iiic) of the said clause, are mandatorily required to file their return of income.

It is proposed to amend the Act in order to provide that entities covered under clauses (iiiab) and (iiic) of clause (23C) of section 10 shall be mandatorily required to file their return of income.

Comment: Now it is mandatory for every hospital, educational institution, university or other institutions to file the income tax return as per the provisions of Section 139 either a government or non-government institution. This provision seems to be enacted for the controlling the funds provided to the government institutions through income tax department. Further this shall be a very good opportunity for the professionals also new income tax assesseees have been created by this provision.

Further, earlier there was no right with the institution in case the Approval was rejected by the AO under Section 10(23C). The institution had to file a writ against the said rejection. Now an amendment has been inserted and the appeal can be made under Section 253 in case of rejection of Approvals.

RESIDENTIAL STATUS:

Section 6, Power of the CBDT to prescribe the manner and procedure for computing period of stay in India (Refer Clause 4 of the bill):

Date of Applicability: This amendment will take effect from AY 2015-16.

Provision: In the case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty with regard to the manner and basis of determination of the period of stay in India for crew members of such ships who are Indian citizens. *In view of the above, it is proposed to amend the Act to provide that in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.*

Section 6, conditions for determining residency status in respect of Companies (Refer Clause 4 of the Bill):

Date of Applicability: This amendment will take effect from AY 2016-17.

Provision: It is proposed to amend the provisions of section 6 to provide that a person being a company shall be said to be resident in India in any previous year, if:

- (i) it is an Indian company; or
- (ii) its place of effective management, at any time in that year, is in India .

Further, it is proposed to define the place of *effective management to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.*

The modification in the condition of residence in respect of company by including the concept of effective management would align the provisions of the Act with the Double Taxation Avoidance Agreements (DTAAs) entered into by India with other countries and would also be in line with international standards. It would also be a measure to deal with cases of creation of shell companies outside India but being controlled and managed from India.

Comment: This provision will widen the scope of the corporate taxation and will also leads to increase in litigation for the interpretation of "effective management".

BUSINESS INCOME INCLUDING NON RESIDENT PROVISIONS:

Additional Investment Allowance under new Section 32AD (Refer clause 11 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: A new section 32AD is inserted in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if:

- (a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and
- (b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.

As a safeguard, in case any asset is disposed off by the assessee within a period of five years, then the allowance claimed in the year of installation of such asset would be treated as taxable income of the assessee in which such asset is disposed off.

This deduction shall be available over and above the existing deduction available under section 32AC of the Act. Accordingly, if an undertaking is set up in the notified backward areas in the States of Andhra Pradesh or Telangana by a company, it shall be eligible to claim deduction under the existing provisions of section 32AC of the Act as well as under the proposed section 32AD.

Comment: *This provision is applicable on all the assesseees which is a very good encouragement for non-company assesseees.*

Additional Depreciation at the rate of 35%, Proviso to Section 32(1)(ia) (Refer clause 10 of the bill) and allowance of balance Additional Depreciation in next year:

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: In order to incentivise acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward area in the State of Andhra Pradesh or the State of Telangana, a higher additional depreciation at the rate of 35% in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana on or after the 1st day of April, 2015.

It is also proposed to make consequential amendments in the second proviso to section 32(1) of the Act for applying the existing restriction of the allowance to the extent of 50% for assets used for the purpose of business for less than 180 days in the year of acquisition and installation. However, the balance 50% of the allowance is also proposed to be allowed in the immediately succeeding financial year.

Comment: *Since there were lot of high court rulings on the same, so it is a welcome step and clears the ambiguity for the balance 50% additional depreciation.*

Section 115A, Reduction in rate of tax on Income by way of Royalty and Fees for technical services in case of non-residents (refer clause 27 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: In order to reduce the hardship faced by small entities due to high rate of tax of 25%, it is proposed to amend the Act to reduce the rate of tax provided under section 115A on royalty and FTS payments made to non-residents to 10%.

Section 92BA, Raising the threshold for specified domestic transaction (Refer Clause 24 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: The threshold limit of specified domestic transactions is increased from Rs. 5 Crore to Rs. 20 Crore.

Comment: *This will help the small business to reduce the compliance costs.*

Section 115JB, Provisions of MAT (Refer clause 29 of the bill):

Date of Applicability: This amendment will take effect from AY 2016-17.

Provision:

1. Section 86 of the Act provides that no income-tax is payable on the share of a member of an AOP, in the income of the AOP in certain circumstances. However, under the present provisions, a company which is a member of an AOP is liable to MAT on such share also since such income is not excluded from the book profit while computing the MAT liability of the member. In the case of a partner of a firm, the share in the profits of the firm is exempt in the hands of the partner as per section 10(2A) of the Act and no MAT is payable by the partner on such profits.

In view of the above, it is proposed to amend the section 115JB so as to provide that the share of a member of an AOP, in the income of the AOP, on which no income tax is payable in accordance with the provisions of section 86 of the Act, should be excluded while computing the MAT liability of the member under 115JB of the Act. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also proposed to be added back to the book profit for the purpose of computation of MAT.

2. Further, vide Finance Act (No.2), 2014 it was provided that any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 would be capital asset. Consequently, the income arising to a Foreign Institutional Investor from transactions in securities would always be in the nature of capital gains.

It is, therefore, proposed to amend the provisions of section 115JB so as to provide that income from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) arising to a Foreign Institutional Investor, shall be excluded from the

chargeability of MAT and the profit corresponding to such income shall be reduced from the book profit. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also proposed to be added back to the book profit for the purpose of computation of MAT.

DEDUCTIONS:

Tax benefits under section 80C for the girl child under the Sukanya Samriddhi Account Scheme (Refer clause 7 and 15 of the bill):

Date of Applicability: These amendments will take effect retrospectively from AY 2015-16.

Provision: The following tax benefits have been envisaged in the Sukanya Samriddhi Account scheme:

- (i) The investments made in the Scheme will be eligible for deduction under section 80C of the Act.
- (ii) The interest accruing on deposits in such account will be exempt from income tax.
- (iii) The withdrawal from the said scheme in accordance with the rules of the said scheme will be exempt from tax.

Accordingly, a new clause (11A) is proposed to be inserted in section 10 of the Act so as to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 shall not be included in the total income of the assessee. As a result, the interest accruing on deposits in, and withdrawals from any account under the scheme would be exempt.

Comment: *The scheme of Sukanya Samriddhi is EEE (Exempt interest, Exempt maturity and tax benefit for investment) shall be a good source of saving if any individual is having shortfall in having savings under Section 80C.*

Amendment in section 80D relating to deduction in respect of health insurance premia (Refer clause 18 of the bill):

Date of Applicability: These amendments will take effect from the 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Provision: In view of continuous rise in the cost of medical expenditure, it is proposed to amend section 80D so as to raise the limit of deduction from fifteen thousand rupees to twenty five thousand rupees. It is further proposed to raise the limit of deduction for senior citizens from twenty thousand rupees to thirty thousand rupees.

Further, it is also proposed to provide that any payment made on account of medical expenditure in respect of a very senior citizen, if no payment has been made to keep in force an insurance on the health of such person, as does not exceed thirty thousand rupees shall be allowed as deduction under section 80D. The aggregate deduction available to any individual in respect of health insurance premia and the medical expenditure incurred would however be limited to thirty thousand rupees. Similarly aggregate deduction for health insurance premia and medical expenditure incurred in respect of parents would be limited to thirty thousand rupees.

Raising the limit of deduction under section 80DDB (Refer clause 20 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: It is proposed to amend section 80DDB so as to provide that the assessee will be required to obtain a prescription from a specialist doctor either working in government hospital or private hospital for the purpose of availing this deduction.

Further, it is also proposed to amend section 80DDB to provide for a higher limit of deduction of up to eighty thousand rupees, for the expenditure incurred in respect of the medical treatment of a "very senior citizen".

Comment: *Earlier the certificate was required from the specialist of government hospitals only which was very difficult for a small town common man to manage. Now inclusion of private specialists will help the common man to avail such benefit.*

Raising the limit of deduction under section 80DD and 80U for persons with disability and severe disability (Refer clause 19 and 23 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: The limit of deduction in respect of a person with disability to Rs. 75000/- under section 80DD and 80U. Further, the limit of deduction in respect of a person with severe disability to Rs. 1,25,000/-.

Raising the limit of deduction under 80CCC (Refer clause 16 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: In order to promote social security, the limit of deduction under section 80CCC is increase from Rs. 1 lacs to Rs 1.50 lacs, within the overall limit provided in section 80CCE.

Additional deduction under 80CCD (Refer clause 17 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: Sub section (1A) of section 80CCD is omitted and an additional deduction of any amount paid up to Rs. 50,000/- as contributions made to NPS by any individual assessee. Consequential amendments are also proposed in sub-section (3) and sub-section (4) of section 80CCD.

Comment: *The additional deduction is to promote the savings for the individual for the old age as pension fund which is over and above the existing saving limit of Rs. 1.50 lacs.*

Section 80G, Tax benefits for Swachh Bharat Kosh, Clean Ganga Fund and Nation Fund for Control of Drug Abuse (Refer clause 7 & 21 of the bill):

Date of Applicability: This amendment will take effect from AY 2015-16.

Provision: Any donation made to the Swachh Bharat Kosh, Clean Ganga Fund and National Fund for Control of Drug Abuse shall be eligible for 100% deduction under section 80G from the total income of the donor.

Comment: Any donation made by the company under the above said swachh bharat kosh shall be not be considered as the utilization of CSR Fund as per section 135 of the companies Act, 2013.

Section 80JJAA, Deduction for employment of new workmen (Refer Clause 22 of the bill):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: With a view to encourage generation of employment, it is proposed to amend the section so as to extend the benefit to all assesseees having manufacturing units rather than restricting it to corporate assesseees only. Further, in order to enable the smaller units to claim this incentive, it is proposed to extend the benefit under the section to units employing even 50 instead of 100 regular workmen.

Comment: Earlier the benefit was restricted to companies only but now provided to all assesseees which are a very good encouragement for non-company assesseees.

TAX DEDUCTIONS/COLLECTION AT SOURCE:

Section 197A, Enabling of filing of Form 15G/15H for payment made under life insurance policy (Refer clause 49 of the bill):

Date of Applicability: This amendment will take effect from 1st June, 2015.

Provision: The existing provisions of section 197A of the Act *inter alia* provide that tax shall not be deducted, if the recipient of the certain payment on which tax is deductible furnishes to the payer a self-declaration in prescribed Form No.15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil.

It is, therefore, proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194DA also eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

Section 203A, Requirement of obtaining TAN (Refer clause 52 of the bill):

Date of Applicability: This amendment will take effect from 1st June, 2015.

Provision: To reduce the compliance burden of certain types of deductors, it is proposed to amend the provisions of section 203A of the Act so as to provide that the requirement of obtaining and quoting of TAN under section 203A of the Act shall not apply to the notified deductors or collectors.

Section 194C, Clarification regarding deduction of tax from payments made to transporters (Refer clause 43 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision: As there is no rationale for exempting payment to all transporters, irrespective of their size, from the purview of TDS, it is proposed to amend the provisions of section 194C of the Act to expressly provide that the relaxation under sub-section (6) of section 194C of the Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to an contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE of the Act (i.e. a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN.

Comment: *The TDS need to be deducted on the transporter after 01.06.2015 as per the provisions of 194C in case the transporter is not eligible for the provision of 44AE or has not furnished a declaration along with his PAN.*

Rationalization of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) (Refer Clauses 37, 38, 40, 41, 42, 48, 50, 51, 53, 54, 55, 62, 73, 74 & 75 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision:

Currently, the provisions of sub-section (3) of section 200 of the Act enable the deductor to furnish TDS correction statement and consequently, section 200A of the Act allows processing of the TDS correction statement. However, currently, there does not exist any provision for allowing a collector to file correction statement in respect of TCS statement which has been furnished. It is, therefore, proposed to amend the provisions of section 206C of the Act so as to allow the collector to furnish TCS correction statement.

Currently, there does not exist any provision in the Act to enable processing of the TCS statement filed by the collector as available for processing of TDS statement. As the mechanism of TCS statement is similar to TDS statement, it is proposed to insert a provision in the Act for processing of TCS statements on the line of existing provisions for processing of TDS statement contained in section 200A of the Act. The proposed provision shall also incorporate the mechanism for computation of fee payable under section 234E of the Act.

Under the existing provisions of the Act, after processing of TDS statement, intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TDS statement is (i) subject to rectification under section 154 of the Act; (ii) appealable under section 246A of the Act; and (iii) deemed as notice of demand under section 156 of the Act. As the intimation generated after the proposed processing of TCS statement shall be at par with the intimation generated after processing of TDS statement, it is, further, proposed to provide that intimation generated after processing of TCS statement shall also be:

- (i) subject to rectification under section 154 of the Act;
- (ii) appealable under section 246A of the Act; and
- (iii) deemed as notice of demand under section 156 of the Act.

Further, as the intimation generated after proposed processing of TCS statement shall be deemed as a notice of demand under section 156 of the Act, the failure to pay the tax specified in the intimation shall attract levy of interest as per the provisions of section 220(2) of the Act. However, section 206C (7) of the Act also contains provisions for levy of interest for non-payment of tax specified in the intimation to be issued. To remove the possibility of charging interest on the same amount for the same period of default both under section 206C (7) and section 220(2) of the Act, it is proposed to provide that where interest is charged for any period under section 206C (7) of the Act on the tax amount specified in the intimation issued under proposed provision, then, no interest shall be charged under section 220(2) of the Act on the same amount for the same period.

In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, it is proposed to amend the provisions of sections 200 and 206C of the Act to provide that where the tax deducted [including paid under section 192(1A)] / collected has been paid without the production of a challan, the PAO/ TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorised by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars. To ensure compliance of this proposed obligation of filing statement, it is proposed to amend the provisions of section 272A of the Act so as to provide for a penalty of Rs.100/- for each day of default during which the default continues subject to the limit of the amount deductible or collectible in respect of which the statement is to be furnished.

Under section 192 of the Act, the person responsible for paying (DDO) income chargeable under the head "salaries" under the Act is authorised to allow certain deductions, exemptions or allowances or set-off of certain loss as per the provisions of the Act. In these circumstances, the DDO has to depend upon the evidence/particulars furnished, if any, by the employees in support of their claim of deductions, exemptions, etc. The existing provisions of the Act do not contain any guidance regarding nature of evidence/documents to be obtained by the DDO. In order to bring clarity in this matter, *it is proposed to amend the provisions of section 192 of the Act to provide that the person responsible for paying, for the purposes of estimating income of the assessee or computing tax deductible under section 192(1) of the Act, shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner.*

The existing provisions of sub-section (6) of section 195 of the Act provide that the person referred to in section 195(1) of the Act shall furnish prescribed information. In view of this, *it is proposed to amend the provisions of section 195 of the Act to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non-resident, not being a company, or to a foreign company, shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed.* Further, currently there is no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident. *For ensuring submission of accurate information in respect of remittance to non-resident, it is further proposed to insert a new provision in the Act to provide that in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195(6) of the Act, a penalty of one lakh rupees shall be levied.* It is also proposed to amend the provisions of section 273B of the Act to provide that no penalty shall be imposable

under this new provision if it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of information under sub-section (6) of section 195 of the Act.

Comment: *Processing of TCS returns shall be on the same platform as of TDS returns and the rectification of the TCS returns shall be same as TDS returns.*

Further for the payments to non-residents governed under the provisions of section 195, furnishing of information related to all the payments made to non-residents irrespective of the applicability of TDS has been made mandatory. In this regard, the Form will be prescribed/ notified by CBDT. Further there shall be a penalty of Rs. 1 lac for noncompliance of said provision.

Further governments as well as non-government employers need to be alert as they have to collect evidence/proof from the employees for providing claims/exemptions/deduction as will be prescribed by the CBDT.

Now there shall be tax deduction on the recurring deposits of the bank under Section 194A of the act. Further, the TDS will be deducted under the CBS system of banking after considering the total deposits with the bank instead of deposits with a specific branch of the bank.

Co-operative banks are also now covered under the scope of Section 194A and they need to deduct the TDS on the interest paid to the members of the bank.

Further, in case of Motor Accident Claims, if the interest amount exceeds Rs 50,000/- then the TDS need to be deducted when the amount of claim is paid rather than when the amount of Claim is credited. This shall remove the discrepancy in 26AS Form for tax credit as there were instances when the amount credited is in one year and the amount of claim was paid in other year.

Simplification of Tax Deduction at Source (TDS) mechanism for Employees Provident Fund Scheme (EPFS) (Refer clause 41 & 49 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision: A new provision is inserted in Act for deduction of tax at the rate of 10% on pre-mature taxable withdrawal from EPFS. It is also proposed to provide a threshold of payment of Rs.30,000/- for applicability of this proposed provision. For reducing the compliance burden of these employees, it is further proposed that the facility of filing self-declaration for non-deduction of tax under section 197A of the Act shall be extended to the employees receiving pre-mature withdrawal i.e. an employee can give a declaration in Form No. 15G to the effect that his total income including taxable pre-mature withdrawal from EPFS does not exceed the maximum amount not chargeable to tax and on furnishing of such declaration, no tax will be deducted by the trustee of EPFS while making the payment to such employee. Similar facility of filing self-declaration in Form No. 15H for non-deduction of tax under section 197A of the Act shall also be extended to the senior citizen employees receiving pre-mature withdrawal.

However, some employees making pre-mature withdrawal may be paying tax at higher slab rates (20% or 30%). Therefore, the shortfall in the actual tax liability vis-à-vis TDS is required to be paid by these employees either by requesting their new employer to deduct balance tax or through payment of advance tax / self-assessment tax. For ensuring the payment of balance tax by these employees, furnishing of valid Permanent Account Number (PAN) by them to the EPFS is a prerequisite. The existing provisions of section

206AA of the Act provide for deduction of tax @ 20% in case of non-furnishing of PAN where the rate of deduction of tax at source is specified. As mentioned earlier, there may be employees who are liable to pay tax at the highest slab rate. *In order to ensure the collection of balance tax by these employees, it is also proposed that non-furnishing of PAN to the EPFS for receiving these payments would attract deduction of tax at the maximum marginal rate.*

Comment: *Earlier there were certain instances when there were premature withdrawals of EPF and there were no deduction of Tax at source reason vides the employees used to hide them from the tax authorities and escape the payment of taxes. Now, for the premature withdrawal, mandatory tax deduction and furnishing of PAN will help the department to collect the actual taxes on all the premature withdrawals which are falling with in the definition of income under Income tax Act.*

ASSESSMENT OF INCOME INCLUDING PENALTY PROVISIONS:

Section 151. issue of notice for re-assessment (refer clause 35 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision: Section 151 of the Act provides for sanction from certain authorities before issue of notice for reassessment of income under section 148. Under certain specified circumstances, the Assessing Officer is required to obtain sanction before issue of notice under section 148. Section 151 specifies different sanctioning authorities based on- (i) whether scrutiny under sub-section (3) of section 143 or section 147 has been made earlier or not, (ii) whether notice is proposed to be issued within or after four years from the end of relevant assessment year, and (iii) the rank of the Assessing Officer proposing to issue notice.

To bring simplicity, it is proposed to provide that no notice under section 148 shall be issued by an assessing officer up to four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Section 153C. Assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned (Refer clause 36 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision: Section 153C of the Act relates to assessment of income of any other person. The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, Jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall

proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Disputes have arisen as to the interpretation of the words “belongs to” in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, it is proposed to amend the aforesaid section to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, Jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Section 158AA, Procedure for appeal by revenue when an identical question of law is pending before Supreme Court (Refer clause 39 of the bill):

Date of Applicability: This amendment will take effect from the 1st day of June, 2015.

Provision: It is proposed to insert a new section 158AA so as to provide that notwithstanding anything contained in this Act, where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court, in an appeal or in a special leave petition under Article 136 of the Constitution filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may, instead of directing the Assessing Officer to appeal to the Appellate Tribunal under sub-section (2) or sub-section (2A) of section 253, direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within sixty days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

It is further proposed to provide that the Commissioner or Principal Commissioner shall proceed under sub-section (1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section (2) or section (2A) of section 253 and accordingly may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.

It is also proposed to provide that where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within sixty days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner and save as otherwise provided in the said section 158AA, all other provisions of Part B of Chapter XX shall apply accordingly.

Comment: *This section will decrease the repetitive litigations and also reduce the cost of litigation of department as well as assessee.*

Deferment of provisions relating to General Anti Avoidance Rule ("GAAR") (Refer Clause 25 of the bill):

Date of Applicability: This amendment will take effect from AY 2015-16.

Provision: The existing provisions of the General Anti Avoidance Rule (GAAR) introduced by the Finance Act, 2013 are contained in Chapter X-A (consisting of section 95 to 102) and section 144BA of the Act. Chapter X-A provides the substantive provision of GAAR whereas section 144BA provides the procedure to be undertaken for invoking GAAR and passing of the assessment order in consequence of GAAR provisions being invoked. GAAR provisions are to come into effect from 1.04.2016 but now it is proposed to be deferred by two years and be made applicable from financial year 2017-18 (Assessment Year 2018-19).

Further, all the investments made up to 31 March 2017 would be out of the ambit of GAAR provisions.

Amendment in Section 269SS and 269T (Refer Clauses 66, 67, 69 & 70 of the bill):

Date of Applicability: These amendments will take effect from 1st day of June, 2015.

Provision: In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

It is also proposed to amend section 269T of the Income-tax Act so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

Comment: *This will be one more tool for the income tax department to restrict the wrong practices and to control black money.*

Section 263: Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue (Refer clause 65 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision: The existing provisions contained in sub-section (1) of section 263 of the Income-tax Act provides that if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the assessing officer or cancelling the assessment and directing fresh assessment.

The interpretation of expression “erroneous in so far as it is prejudicial to the interests of the revenue” has been a contentious one.

In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

- (a) the order is passed without making inquiries or verification which, should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

Section 271. Amount of tax sought to be evaded for the purposes of penalty for concealment of income (Refer clause 68 of the bill):

Date of Applicability: This amendment will take effect from AY 2016-17.

Provision:

Under the existing provision contained in clause (c) of sub-section (1) of section 271 of the Act penalty for concealment of income or furnishing inaccurate particulars of income is levied on the “*amount of tax sought to be evaded*”, which has been defined, *inter-alia*, as the *difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income*.

Problems have arisen in the computation of amount of tax sought to be evaded where the concealment of income or furnishing inaccurate particulars of income occurs in the computation of income under provisions of section 115JB or 115JC of the Act and also under the provisions other than the provisions of section 115JB or 115JC of the Act (hereafter referred as general provisions). Further, courts have held that penalty under section clause (c) of sub-section (1) of section 271 cannot be levied in cases where the concealment of income occurs under the income computed under general provisions and the tax is paid under the provisions of section 115JB or 115JC of the Act.

Tax paid under the provisions of section 115JB or 115JC over and above the tax liability arising under general provisions is available as credit for set off against future tax liability. Understatement of income and the tax liability thereon under general provisions results in larger amount of such credit becoming available to the assessee for set off in future years. Therefore, where concealment of income, as computed under the general provisions, has taken place, penalty under clause (c) of sub-section (1) of section 271 should be leviable even if the tax liability of the assessee for the year has been determined under provisions of section 115JB or 115JC of the Act.

Accordingly, it is proposed to amend section 271 of the Act so as to provide that *the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of section 115JB or 115JC. Further, in a case where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored.*

Comment: This amendment overrules the judgment of the Supreme Court.

OTHERS:

Abolition of levy of wealth-tax under Wealth-tax Act, 1957 (Refer clause 79):

Date of Applicability: These amendments will take effect from AY 2016-17.

Provision: The Wealth tax Act enacted in 1957 is abolished and discontinued.

Comment: Department was not able to implement the Wealth tax Act, abolished and substituted with the surcharge for super rich assesseees in the income tax.

Section 288, Conditions for furnishing reports and certificates on certain accountants (Refer clause 77 of the bill):

Date of Applicability: This amendment will take effect from 01.06.2015.

Provision:

The Act contains several provisions (e.g. section 44AB, section 80-IA, section 92E, section 115JB, etc.) which mandate the taxpayers to furnish audit reports and certificates issued by an 'accountant' for ensuring correct reporting/computation of taxable income by the tax payers.

Explanation below section 288(2) of the Act defines an 'accountant' as a chartered accountant within the meaning of Chartered Accountants Act, 1949 (including a person eligible to be appointed as auditor under section 226(2) of the Companies Act, 1956, of the companies registered under any State).

To ensure the independence of auditor, sub-section (3) of section 141 of the Companies Act, 2013 contains a list of certain persons who are not eligible for appointment as auditor. The audit/certification function under the Income-tax Act is mainly provided for protecting the interests of revenue. An auditor who is not independent cannot meaningfully discharge his function of protecting the interests of revenue. Therefore, it is proposed to amend section 288 of the Act to provide that *an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company.* On similar lines, ineligibility for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of non-company is also proposed to be provided. However, it is proposed to provide that the ineligibility for carrying out any

audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in sub-section (1) of section 288 of the Act as authorised representative on behalf of that assessee. It is further proposed to provide that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction. (It is also proposed to revise the definition of 'accountant' in Explanation below section 288(2) of the Act on the lines of definition of 'chartered accountant' in the Companies Act, 2013).

Comment: Any chartered accountant providing any certificate to a company or non-company assessee, should go through the amended provisions for the applicability of eligibility to provide certificate.

Disclaimer:

The first “full budget” of the new government was presented by the Hon’ble Finance Minister of India on 28 February 2015. This document contains the views of the author on the analysis of the Union Finance Bill 2015 with budget highlights, which should not be relied upon for decision making and for giving advices. Though due care has been taken in the preparation however, the observations and comments are the personal opinion of the author. The observations are on the Budget 2015 as presented in the Parliament and are subject to amendments (if any).

The document captures the provisions which are of interest to a larger group of persons (such as service tax and income tax provisions) and do not cover all the amendments proposed in the Budget 2015.

The author has taken the initiative to document the analysis of the Union Finance Budget and seeks suggestions or feedback. These suggestions / feedback will encourage the author.