

Union Budget 2016-17

ICAI Pre-Budget Suggestions relating to Direct Tax Accepted in Finance Bill 2016



S. No.	Topic	Section	Suggestion of ICAI	Changes Proposed by Union Budget 2016-17
1.	The Income Declaration Scheme, 2016	NA	In respect of high no. of pending cases and to reduce litigations, ICAI had recommended a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS).	On the lines of suggestion of ICAI, the Finance Bill, 2016 had proposed 'The Income Declaration Scheme, 2016' under Chapter IX to the Finance Bill, 2016.
2.	System of Assessment and Appeals : Need for disconnect between the tax payer and the tax administration	NA	The ICAI had suggested that the need for personal interface between the taxpayer and the Income-tax authority should be minimised since it would help in reducing the possibility of unfair practices.	- The Finance Bill, 2016 has, in line with ICAI's suggestion proposed to amend the relevant provisions of the Act like Section 282A, 143(2), 2(23C) so as to provide adequate legal framework for paperless assessment in order to enhance efficiency and reduce the burden of compliance. - The cases selected for scrutiny are proposed to be scrutinised in e-environment whereby unless the assessee himself wants to be heard, or for special reasons to be recorded, the Assessing Officer wants to hear the party, there will be no face to face contact of IT Department with assessee.

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3.	Consortium of Members - treatment as an Association of Persons (AOP)	2(31),4	ICAI had suggested for provision of clear guidelines regarding the situations necessitating treatment of consortium of members/contractors particularly to implement large infrastructure projects in Engineering Procurement and Construction ('EPC') contracts and Turnkey Projects as an AOP.	In line with suggestion of ICAI, the CBDT <i>vide</i> Circular No. 7/2016, dated 07-03-2016 had provided for concrete attributes wherein the consortium arrangement may not be treated as an AOP.
4.	Amendment in Rule 8D	14A	Computation of disallowance by applying Rule 8D has created genuine hardship for tax payers in some cases, as the calculation basis under rule 8D is quite arbitrary. The reason for hardship was that in many cases, the disallowance calculated as per rule 8D method exceeded the amount of total exempted income earned during the year. Therefore, ICAI had recommended for relook of this provision.	In this regard, the Honourable Finance Minister in his Budget Speech has proposed to rationalise the formula in Rule 8D governing specified quantification. The said Rule is being amended to provide that disallowance will be limited to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed. The said change would be brought through issue of an appropriate notification.
5.	Special provisions on taxation of unrealised rent allowed as deduction when realised subsequently, unrealised rent received subsequently and arrears of rent received	25A, 25AA, 25B	ICAI had recommended that Section 25AA be suitably amended to provide that unrealised rent subsequently realised shall after deducting a sum equal to thirty percent of such amount shall be deemed to be income chargeable under the head "Income from House property".	The Finance Bill, 2016 has proposed to simplify specified provisions and merge them under a single new Section 25A so as to bring uniformity in tax treatment of arrears of rent and unrealised rent. Relevant proposal provides that thirty per cent of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.
6.	Depreciation on 'Oil Well'	32, New Appendix I to Income-tax Rules, 1962	ICAI had recommended to classify 'Oil Well' as a plant and machinery by amending the Income-tax Rules, 1962 through issue of an appropriate notification.	The CBDT had <i>vide</i> Notification No 13/2016, dated 03-03-2016 had amended the Income-tax Rules, 1962 and included 'Oil Wells' under 'Plant and Machinery'.

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7.	Rationalisation of scope of tax incentive under Section 32AC	32AC	ICAI had recommended that the provisions of Section 32AC be suitably amended so that new assets acquired on or after 1.04.2014 and installed before 31.03.2017 be provided the <i>benefit of investment allowance in the year of installation.</i>	The Finance Bill, 2016 has, in line with ICAI's suggestion, proposed to amend sub-Section (1A) of Section 32AC so as to provide that the acquisition of the plant & machinery of the specified value has to be made in the previous year. However, <i>installation may be made by 31.03.2017 in order to avail the benefit of investment allowance of 15%.</i> It is further proposed to provide that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-Section shall be allowed in the year in which the new asset is installed.
8.	NPA calculation for NBFCs	36(1)(viia)	ICAI had recommended that NBFCs may also be included in Section 36(1)(viia) so that the benefits are also extended to infrastructure financing NBFCs.	The Finance Bill, 2016 has proposed to amend the provision of clause (viia) of sub-Section (1) of Section 36 so as to provide deduction from total income (computed before making any deduction under this clause and Chapter-VIA) on account of provision for bad and doubtful debts to the extent of five per cent of the total income in the case of NBFCs. This is in line with ICAI's suggestion.
9.	Rationalisation of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property	50C	Current Section 43CA provides that the stamp duty value may be taken as on the date of the agreement for transfer instead of the date of registration, provided at least a part of the consideration for transfer has been received by any mode other than cash on or before the date of agreement. ICAI had recommended that a similar provision for adopting stamp duty value on the date of agreement for transfer instead of the date of registration be inserted in Section 50C also.	The Finance Bill, 2016 has proposed to amend the provisions of Section 50C in line with ICAI's suggestion so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that the said provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

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10.	Income from other sources (Rationalisation of Section 56 of the Income-tax Act)	56(2)(vii)	In case of Section 56(2) (vii), it has been specifically provided that the said clause is not applicable when shares have been received by way of amalgamation covered under Section 47. No such exclusion is applicable for Section 56 (2)(vii) (c)(ii). ICAI had recommended that a proviso on the lines of clause (vii) be introduced for the purpose of clause (vii)(c)(ii) also.	The Finance Bill, 2016 has proposed to amend Section 56 so as to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause (vii) of sub-Section (2) of Section 56.
11.	Deductions in respect of rents paid	80GG	ICAI had recommended that considering the prevailing inflationary conditions in India, the limit under Section 80GG be reviewed and enhanced accordingly.	The Finance Bill, 2016 has proposed to amend Section 80GG so as to increase the maximum limit of deduction from existing ₹2,000 per month to ₹5,000 per month.
12.	Applicability of MAT to foreign companies	115JB	ICAI had recommended that Section 115JB may be appropriately amended to clarify that the same does not apply to any foreign company which is not required to maintain books of account or prepare statement of profit and loss under the Companies Act, 2013.	The Finance Bill, 2016 has proposed to amend the Income-tax Act so as to provide that with effect from 01.04.2001, the provisions of Section 115JB shall not be applicable to a foreign company if – (i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-Section (1) of Section 90 or the Central Government has adopted any agreement under sub-Section (1) of Section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or (ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

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13.	Enabling revision of belated return	139(5)	ICAI had recommended that Section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.	The Finance Bill, 2016 has proposed to substitute sub-Section (5) of the aforesaid Section so as to provide that if any person, having furnished a return under Section 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
14.	Enhancement of TDS limits	194C and 194H	ICAI had recommended for enhancement of threshold limits under Section 194C and 194H.	The Finance Bill, 2016 proposes to raise the thresholds limits under Section 194C and 194H.
15.	Exemption from requirement of furnishing PAN under Section 206AA to certain non-resident	206AA	ICAI had recommended that that a proviso should be inserted in Section 206AA to the effect that the provisions of the said Section shall not be applicable in respect of the deductee, being a non resident who is not required to get PAN allotted in his name.	The Finance Bill, 2016 has proposed to amend Section 206AA so as to provide that the provisions of the said section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.
16.	Tax Collection at Source (TCS) on sale of vehicles; goods or services	206C	ICAI had also suggested that tax @ 1% of ex-showroom price should be allowed to be collected by the seller of high value cars, say, cars having value above ₹10 Lakhs, from the ultimate consumer. ICAI had recommended that TCS be collected @ 1% on luxury goods purchased in cash in excess of ₹30,000.	The Finance Bill, 2016 has proposed to amend the Section 206C to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees and sale in cash of any goods (other than bullion and jewellery), or providing of any services (other than payments on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees.
17.	Rate of Interest on Tax Refunds	244A	ICAI had recommended that since the rate of interest on refund is only half than what is charged, the rate may be suitably increased to minimise this huge difference.	The Finance Bill, 2016 has proposed to provide that where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-Section (5) of Section 153, the assessee shall be entitled to receive, in addition to the interest payable under sub-Section (1) of Section 244A, an additional interest on such refund amount calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-Section (5) of Section 153 to the date on which the refund is granted.

ICAI Pre-Budget Suggestions relating to Indirect Tax Accepted in Finance Bill 2016

A. SERVICE TAX

S. No.	Topic(s)	Suggestion(s) as per ICAI Pre-Budget	Suggestion as per Union Budget 2016-17
1.	Exemption to Education Services.	Keeping in view the Prime Ministers idea of Skilled India it is suggested that all the Education Services directly relating to the delivery of education or training to students be kept outside the purview of Service Tax.	(Partial Accepted) - Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners are being exempted from service tax. - Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from service tax. - Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management (PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management are being exempted from service tax.
2.	Payment of Service Tax on provisional Basis: Anomaly in Rule-6 of Service Tax Rules, 1994 be rectified.	It is suggested that the Central Excise (No.2) Rules, 2001 be replaced with Central Excise Rules, 2002 as the same has been redundant.	(Accepted) - Rule 6(4) is being amended so as to substitute the reference to the Central Excise (No. 2) Rules, 2001, with a reference to the Central Excise Rules, 2002. - The above changes, except the changes mentioned in para 11.5 (which will come into effect from 1st June, 2016), shall come into effect from the 1st day of April 2016.
3.	Introduction of Annual Return in Service Tax	It is suggested to introduce filing of Annual Return of Service Tax along with reconciliation statement certified by Chartered Accountant.	(Partial Accepted) - To reduce compliance cost, the number of returns to be filed by a central excise assessee, above a certain threshold, is being drastically reduced, from 27 to 13, one annual and 12 monthly returns. Monthly returns are already being e-filed. CBEC will provide for e-filing of annual return also. The annual return will also have to be filed by Service Tax assessee, above a certain threshold, taking total number of returns to three in a year for them. This change shall come into effect from 1st April, 2016. - Rule 9A of the Central Credit Rules, 2004 is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board.

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			The provisions of rule 12 of the Central Excise Rules, 2002, in so far as they relate to annual return shall, mutatis-mutandis, apply to the annual return required to be filed under this rule.
4.	Interest on delayed payment of service tax	- It is suggested that this amendment be made applicable for those assesses who have collected the tax but not remitted to the government. The assessee making delay in payment of tax due to other reasons be not penalised in parity with the evaders. - It is suggested that the rates of interest be restored to the original rate at 18% irrespective of the period of delay as from the aforesaid calculation effective rate of interest comes to 36% per annum or 3% per month which is very huge. It may be noted that under the Income-tax Act, delay in payment of tax only attract interest that too at the much lower rate of 12% per annum (after return date 18% P.A) and there is no penalty provisions for delay in payment of income tax.	(Accepted) - Section 75 of the Finance Act is proposed to be amended so that a higher rate of interest would apply to a person who has collected the amount of service tax from the service recipient but not deposited the same with the Central Government. - Interest rates on delayed payment of duty/tax across all indirect taxes is proposed to be made uniform at 15%, except in case of service tax collected but not deposited with the Central Government, in which case the rate of interest will be 24% from the date on which the service tax payment became due. Notifications under section 73B and section 75 of the Finance Act, 1994 are being issued accordingly. - In case of assessee, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of service tax will be 12%.
5.	Prosecution - Need to incorporate mens rea	Prosecution provisions ought to apply only in exceptional cases and must include mens rea. Further, in the cases of interpretational issues such provisions should not be applied.	(Accepted) - Section 89 of the Finance Act, 1994. The monetary limit for filing complaints for punishable offences is proposed to be enhanced to ₹2 crore. - Sections 90 and 91 of the Finance Act, 1994. The power to arrest in service tax law is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer, and amount of such tax collected but not paid is above the threshold of ₹2 crore. Sections 90 and 91 of the Finance Act, 1994 are being amended accordingly.
6.	Conflict between Section 67A and Rule 4 & 5 of Point of Taxation Rules.	- It is suggested that Rule 4 & 5 of Point of Taxation Rule be suitably amended to bring them in line with the provisions of Section 67A and this conflict be removed. - It is suggested that Rule 5 be suitable amended to provide that it applies only from the date of coming into force of tax on a new service.	(Partial Accepted) - Section 67A is being amended to obtain rule making powers in respect of the Point of Taxation Rules, 2011, so as to provide that the point in time when service has been provided or agreed to be provided shall be determined by rules made in this regard. - Point of Taxation Rules, 2011 is being amended accordingly

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B. CENVAT CREDIT RULES, 2004			
7.	Recovery of CENVAT credit wrongly taken or erroneously refunded	It is suggested that the changes brought in Rule 14 be rolled back to make it beneficial for the assesseees.	(Accepted) - The existing sub- rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilised. The said sub-rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit. - Sub-rule (2) of rule 14 being omitted.
8.	Refund of CENVAT Credit – Rule 5 of CENVAT Credit Rules	It is suggested that: The application of refund be made on-line with certificate from chartered accountant regarding validity of the refund claimed. <u>The refund application can only be filed after receipt of money in convertible foreign exchange. Export Incentive schemes in line with goods to be put in place.</u>	(Partial Accepted) Notification No. 27/2012 – C.E. (N.T.) is being amended so as to provide that time limit for filing application for refund of Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004, in case of export of services, shall be 1 year from the date of – (a) receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or (b) the date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice.
9.	Amendment to Rule 4(5)- CCR- inclusion of tools sent for Jobwork	It is suggested that Rule 4(5)(b) of CENVAT Credit Rules be amended to allow CENVAT Credit on “tools” falling under chapter heading 820700.00 sent by a manufacturer of final product for job work/ further processing of goods.	(Accepted) Manufacturer of final products is being allowed to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his premises.
C. CENTRAL EXCISE DUTY			
10.	Return under Excise Duty.	- It is suggested that the system of filing monthly excise returns be made quarterly/ half-yearly i.e. at par with filing of VAT returns/ Service Tax returns. - It is suggested that provision of revision of return, in line with service tax, be also introduced in Central Excise. This will help the assessee to revise anyuncorrected data or information submitted, if any.	(Accepted) - The Central Excise Rules, 2002 are being amended so as to: (a) reduce the number of returns to be filed by a central excise assessee above a certain threshold from 27 to 13, that is, one annual and 12 monthly returns. Monthly returns are already being e-filed. CBEC will provide for e-filing of annual return also. This annual return will have to be filed by service tax assesseees also, above a certain threshold, taking total number of returns to three in a year for them,

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			(b) extend the facility for revision of return, hitherto available to a service tax assessee only, to manufacturers also.
11.	SSI exemption for clearance of goods to Nepal or Bhutan.	It is suggested that Explanation no. G of Notification No. 8/2003 - CX dated 01 March, 2003 be amended to exclude exports to Nepal from the said explanation retrospectively from 01 March 2012.	(Accepted) Consequent upon abolition of the Duty Refund Procedure for exports to Nepal, notification No.8/2003-Central Excise dated 01.03.2003 is being amended so as to exclude value of clearances made for export to Nepal from the definition of "clearances for home consumption" under the said notification. Notification No. 8/2003-Central Excise, dated 1st March, 2003 as amended by notification No. 8/2016-Central Excise dated 1st March, 2016 refers.
D. OTHERS			
12.	Number of benches at CESTAT level	It is suggested that the process of Constitution more Benches of the CESTAT be made speedy.	(Accepted) 11 new benches of Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

Events

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Young Members Empowerment Committee Programme Chairman: CA. Mukesh Singh Kushwah, M. No. 098104 70274; 093104 70274 or Email: chairmanymec@icai.in & kushwah@rediffmail.com ; cakushwah@gmail.com				
1.	Discussion on Recent Amendments under Income Tax Act & Practice Development Strategy for Young CAs	08.04.2016	Delhi	6
Topics	Office Management and Practice Development Strategy for Young CAs Recent Amendments under Income Tax Act			
Fees	For Online Registration upto 6th April, 2016 ₹400/- for Young Members (Up to the age of 30 years as on 01.01.2016 i.e., who are born on or after 01.01.1986) ₹ 700/- for Senior Members For On spot Registration ₹500/- for Young Members (Up to the age of 30 years as on 01.01.2016 i.e., who are born on or after 01.01.1986) ₹800/- for Senior Members			
Contact Person	Programme Director CA. Rajesh Sharma, Member, Young Members Empowerment Committee M. No. +91 98102 77394, 93102 77394 or Email: rajeshsharmaca@rediffmail.com ; For Registration & Further Information Contact: Young Members Empowerment Committee, ICAI, Tel. No. + 91-11-30110557 or E mail: ymec@icai.in ; Kindly visit www.ymec.in for more details.			

¹ For more details about the forthcoming events, please refer the detailed announcements hosted on the ICAI website www.icai.org