Grant Thornton

An instinct for growth™

Overview of the Union Budget 2014-15

July 2014

"Budget 2014 – A step towards 'acche din'

When we at Grant Thornton conducted a pre-budget survey, the recurring demands from the industry were to give increased tax benefit to individual tax payer, usher in an investor-friendly and growth-oriented regime and bring ease of doing business by controlling tax litigation. The Finance Minister, in his maiden budget today, covered fair ground to meet these demands!

For individuals, he proposes to increase the basic exemption limit by Rs 50,000, an additional interest deduction for self-occupied house property to the extent of Rs 50,000 along with an additional Rs 50,000 deduction under Section 80C. This can benefit an individual upto Rs 35,000 a year in case of an individual who is in the 30% slab rate.

On ushering an investor-friendly regime, the Finance Minister has announced that new cases pertaining to retrospective amendments on Indirect Transfer would go to a high powered committee of the CBDT. This falls short of investor expectation of doing away with the retrospective application altogether. Though, it needs to be seen how the committee would be able to contain litigation on this count.

As regards the growth agenda, the government has promised to resolve issues pertaining to GST within this year and lay down a clear road map. This is encouraging. Further, specific indirect tax sops extended to a few sectors such as power, shipping, auto, consumer durables, tourism, aviation, etc. does make a favorable ground for re-gaining confidence of industry players.

On ease of doing business by reducing litigation, the proposal for strengthening of the APA administration and giving rollback effect of the arrangement is a welcome move. This, coupled with the proposal to use a range for benchmarking and multiple year data, should avoid lot of unnecessary litigation..

In a nutshell, the budget proposals are not everything that people aspired for but is a move in the right direction to usher "acche din"...

Pallavi J Bakhru
Director, Grant Thornton Advisory Private Limited

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Budget snapshot

Direct Tax

01 Increase in individual exemption limit and limits for personal tax deductions/ allowances

02 Pass through status granted to Real Estate Infrastructure Trust and Investment Trust

03 High Powered Committee to look into cases of taxation of indirect transfers arising due to the retrospective amendment

Budget snapshot

Transfer pricing

01 "Roll-back" of Advance Pricing Arrangements proposed

02 Proposal to amend statute to allow use of multiple year data

03 Proposal to shift from mean to range concept where adequate comparables are available

Budget snapshot

Indirect Tax

01 GST implementation date remains ambiguous but government to try to resolve issues within the year

02 Tax benefits provided to select sectors such as power, shipping, auto, consumer durables, tourism, aviation, etc.

03 Indirect tax assessment and litigation process radically amended

Key policy announcements

Inclusive growth

Key policy announcements

Budget estimates

Total expenditure budgeted at Rs 1,794,892 crore and 26.9% hike in plan expenditure at Rs 575,000 crore for FY 2014-15

Rationalisation of key policies

- Set-up of a high level committee by CBDT to scrutinise all fresh cases arising from retrospective amendments in respect to indirect transfers
- The framework of the legislative scheme to implement GST to be adopted during the current FY
- Set-up of a high level committee to interact with trade and industry bodies on a regular basis. Clarifications to be provided by CBDT and CBEC based on the recommendations of this Committee within two months.
- To achieve a goal of 'Minimum Government Maximum Governance', the government will constitute an Expenditure Management Commission to look into various aspects of expenditure reforms
- Overhauling the subsidy regime including food and petroleum subsidies

Employment

- Skill India, a national multi-skill programme is proposed to be launched. It would skill the youth with an emphasis on employability and entrepreneurial skills
- Employment exchanges to be transformed into career centres providing information about job availability
- A Young Leaders Programme to be set up with an initial outlay of Rs 100 crore to promote leadership skills

Social security

- Minimum pension of Rs 1,000 per month to all subscriber members of EPS and an initial provision of Rs 250 crore in the current FY
- Increase in mandatory wage of subscription to EPS from Rs 6,500 to Rs 15,000 and a provision of Rs 250 crore has been made
- 'Uniform Account Number' Service for contributing members to be launched for facilitating portability of Provident Fund accounts

Key policy announcements

Agriculture

- Two institutions of excellence in areas of agro-technology development and creation, and modernisation of existing agri-business infrastructure to make India largely self-sufficient in providing food for its growing population
- Target for agriculture credit flow to increase by Rs 100,000 crore taking the outlay to Rs 800,000 crore during FY 2014-15
- Interest subvention scheme for short-term crop loans to continue in FY 2014-15 as well, and credit of 3% to be made available for timely payments
- Rural Infrastructure Development Fund increased by Rs 5,000 crore and an amount of Rs 50,000 crore allocated for short-term cooperative rural credit

Micro, Small and Medium Enterprises

- To create a conducive ecosystem for venture capital in the MSME sector, it is proposed to establish a Rs 10,000 crore fund to act as a catalyst to attract private capital by way of providing equity, quasi equity, soft loans and other risk capital for start-up companies
- Technology centre network to be set up to promote innovation, entrepreneurship and agro-industry with an outlay of Rs 200 crore

Healthcare and Family Welfare

- 12 new government medical colleges are proposed to be set up along with 15 Model Rural Health Research Centres for research on local health issues in the rural population
- National Programme to halt the deteriorating malnutrition situation in India to be initiated within 6 months
- To promote the 'Health for All' programme, the Government will take two key initiatives - Free Drug Services and Free Diagnosis Service, on priority

Education

- Allocation of Rs 28,635 crore for Sarv Shiksha Abhiyan, Rs 4,966 crore for Rashtriya Madhyamic Shiksha Abhiyan and Rs 500 crore for infusing new training tools and motivating teachers
- Allocation of Rs 500 crore for setting up 5 more IIT's in 5 states
- Proposal to set up 5 more IIM's in 5 states
- Allocation of Rs 100 crore for setting up virtual classrooms and online courses for Communication Linked Interface for Cultivating Knowledge
- Simplification of norms to facilitate education loans for higher studies

Key policy announcements

Infrastructure

- An institution to provide support to mainstreaming Public Private Partnership (PPP) called 3P India to be set up with a corpus of Rs 500 crore
- SEZs will be developed in Kandla and JNPT
- Project on Ganges called 'Jal Marg Vikas' to be undertaken between Allahabad and Haldia
- An investment of Rs 37,880 crore in NHAI and state roads is proposed, including an allocation of Rs 3000 crore for the north-eastern states
- Target of construction of National Highway of 8,500 km will be achieved in the current FY

Oil, Gas, Power and Coal

- Adequate quantity of coal will be provided to power plants which are already commissioned or would be commissioned by March 2015
- Rs 500 crore provided for Ultra Mega Solar Power Projects in 5 states
- Changes, if necessary, in the MMDR Act, 1957 to be introduced to encourage investment in mining sector and promote sustainable mining practices

Financial Service

- Ongoing process of consultations with all the stakeholders on the enactment of the Indian Financial Code and reports of the Financial Sector Legislative Reforms Commission to be completed
- Introduce one single operating demat account
- Introduction of uniform Know Your Customer (KYC) norms and inter-usability of the KYC records across the entire financial sector

Defence and Internal Security

- Provision of Rs 229,000 crore for defence services
- Capital outlay for defence increased by Rs 5,000 crore including a sum of Rs 1,000 crore for accelerating the development of the railway system in the border areas
- Rs 100 crore is provided to set up a Technology Development Fund for defence
- Rs 3,000 crore is provided in the current FY for modernisation of state police forces
- Rs 2,250 crore provided to strengthen and modernise border infrastructure
- FDI ceiling in defence manufacturing increased to 49% from the present 26%

Key policy announcements

Textile

- Trade Facilitation Centre and a Crafts Museum to be set up at Varanasi with an outlay of Rs 50 crore under the Scheme to support a Textile mega-cluster. Six more textile mega-clusters to be set up in 7 cities with an outlay of Rs 200 crore
- Pashmina Promotion Programme (P-3) to be set up for the development of other crafts of Jammu & Kashmir with an outlay of Rs 50 crore
- Hastkala Academy to be set up under the Scheme for the preservation, revival, and documentation of the handloom/ handicraft industry with an outlay of Rs 30 crore

Transport

- Scheme for development of new airports in Tier I and Tier II cities to be launched
- Comprehensive policy to be announced to promote the Indian ship building industry
- Rs 1,000 crore provided for providing rail connectivity in the North Eastern region

Tourism

- Allocation of Rs 500 crore to create 5 specific theme tourist circuits for tourism development and job creation
- World-class tourist facilities to promote Sarnath-Gaya-Varanasi Buddhist circuit
- Allocation of Rs 200 crore for launching National Heritage City Development and Augmentation Yojna to conserve and preserve the heritage of specific cities
- Allocation of Rs 100 crore for preservation of ancient archaeological sites

Banking and Insurance

- Banks to be permitted to raise long-term funds for lending to the infrastructure sector with minimum regulatory pre-emption such as Cash Reserve Ratio, Statutory Liquidity Ratio and Priority Sector Lending
- Six new Debt Recovery Tribunals to be set up
- The pending insurance laws (amendment) Bill to be immediately brought for consideration of the Parliament
- FDI ceiling in insurance increased to 49% from the present 26%

Fiscal and economic review

Hope for growth continues

Fiscal and economic review

GDP growth rate accelerated to 4.7% during FY 2013-14 as compared to 4.5% during FY 2012-13. Continued higher interest rates and policy constraints had adversely impacted investments and triggered the Indian GDP to remain at sub 5% levels even for FY 2013-14.

Growth rate of the **services sector** that stood at 6.8% during FY 2013-14 is marginally lower than the growth rate in FY 2012-13. Its contribution to GDP is estimated at 57% (64.8% including construction).

Growth rate of **manufacturing sector** declined to -0.7% during FY 2013-14 as compared to 1.1% during FY 2012-13

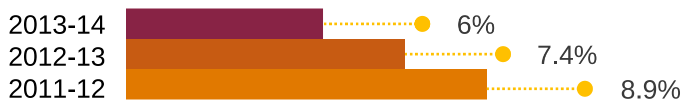
Exports growth in dollar terms stand at 4.1% during FY 2013-14 as against -1.8% during FY 2012-13

Growing aspirations

With expectations of improved performance of the manufacturing sector and better balance of payments situation, the economy is poised to further strengthen in the coming year

Fiscal and economic review

Wholesale Price Index (WPI) inflation averaged 7.35% during 2012-2013, while it had contracted to 5.98% during FY 2013-14.The moderation has largely been due to deceleration in the rate of inflation of non–food manufactured products.



Foreign exchange reserves indicated a marginal increase of US$12.2billion from US$292 billion at the end of March 2013 to US$304.2billion at the end March 2014.

Fiscal and economic review

Fiscal deficit was contained at 4.5% of GDP for FY 2013-14 as against 4.9% of GDP for FY 2012-13. Road map for fiscal consolidation is a fiscal deficit of 3.6% for FY 2015-16 and 3% for 2016-17

Current account deficit was confined at 1.7% of GDP during FY 2013-14 as compared to 4.7% of GDP during FY 2012-13. This was mainly achieved through restriction on non-essential imports and slowdown in overall aggregate demand

Key initiatives

Key legislations such as the Companies Act, 2013, the National Food Security Act 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Pension Fund Regulatory and Development Authority Act, 2013, the Lokpal and Lokayuktas Act, 2013 were passed by Parliament during 2013-14

Gradual diesel price hike, setting up of Rail Tariff Regulatory Authority and linking rail fares to fuel prices was initiated during the UPA regime

On its first day in office, the NDA government constituted Special Investigation Team headed by a retired Supreme Court judge to unearth black money

Direct tax proposals

Promising certainty

Direct tax announcements

No roll back in retrospective amendments

- No specific amendment has been proposed for retrospective taxation of indirect transfers which was introduced by the Finance Act 2012
- The Hon'ble Finance Minister in his Budget speech has assured the investor community that the government will not ordinarily bring about any change retrospectively which creates a fresh liability

However, assurance was given to the investor community that all fresh cases arising out of the retrospective amendments in respect of indirect transfers will be scrutinized by a High level committee to be constituted by the CBDT before any action is initiated in such cases

Mechanisms to minimise litigations announced

- Resident taxpayer (in addition to public sector undertakings) proposed to be eligible for seeking an advance ruling
- Scope of Income-tax Settlement Commission proposed to be expanded
- High level committee to interact with the industry proposed to be formed. The Committee to suggest the requirement for clarifications sought by the industry to CBDT and CBEC

Tax rates

Income tax rates - individuals

- For individuals (aged less than 60 years):

Existing slab (in Rs)	Revised slab (in Rs)	Tax rate
Upto 200,000	Upto 250,000	NIL
200,001 to 500,000	250,001 to 500,000	10%
500,001 to 1,000,000	500,001 to 1,000,000	20%
Above 1,000,000	Above 1,000,000	30%

- For senior citizens (aged 60 years and above but less than 80 years) :

Existing slab (in Rs)	Revised slab (in Rs)	Tax rate
Upto 250,000	Upto 300,000	NIL
250,001 to 500,000	300,001 to 500,000	10%
500,001 to 1,000,000	500,001 to 1,000,000	20%
Above 1,000,000	Above 1,000,000	30%

- Limits remain unchanged for very senior citizen (aged 80 years and above) at Rs 500,000
- Education cess and secondary and higher education cess at 2% and 1% respectively to continue
- Levy of surcharge @ 10% continues for individuals having taxable income exceeding Rs 1 crore

Tax rates

Income tax rates - others

Co-operative societies/ firm/ local authorities:

- No changes in tax rates, surcharge and cess :
  - tax @ 30% to continue
  - surcharge at the rate of 10% shall continue (if the taxable income > 1 Crore)
  - education cess and secondary and higher education cess at 2% and 1% respectively to continue

Companies:

- Domestic companies:
  - 30% tax rate (no change)
  - surcharge @ 5% (if the taxable income > Rs 1 crore but < Rs 10 crore)
  - surcharge @ 10% (if the taxable income > Rs 10 crore)
- Foreign companies
  - 40% tax rate (no change)
  - surcharge @ 2% (if the taxable income > Rs 1 crore but < Rs 10 crore)
  - surcharge @ 5% (if the taxable income > Rs 10 crore)
- Education cess and secondary and higher education cess at 2% and 1% respectively to continue

Personal tax allowances / deductions

Increase in deduction limit for investments under Section 80C from Rs 1 lakh to Rs 1.5 lakh

Enhanced deduction for interest on housing loan

- Deduction for interest paid on capital borrowed for acquisition/construction of a self occupied house proposed to be increased from Rs 1.5 lakh to Rs 2 lakh

The above amendments shall apply from FY 2014-15

Though marginal relief of Rs 50,000 in each, it does bring succor to individual tax payers of up to Rs 30,000 per annum

Taxation of business income

Disallowance of expense in case of TDS defaults

Payments to non-resident:

- Presently, any default in depositing TDS on non-residents payments within the time frame prescribed, results in disallowance of the expense under Section 40(a)(i) of the Act. The expense so disallowed is deductible in the year in which the TDS is deposited
- Budget proposes to allow such expenses in the year of incurrence itself, if the tax is withheld in the year and is deposited before the due date for filing the tax return for that year

Payments to resident:

- Presently, any default in depositing TDS with respect to certain payments to residents, results in disallowance of the entire expense under Section 40(a)(ia) of the Act
- Budget proposes to limit the disallowance to 30% of the expense
- Currently, non-deposit of TDS on certain expenses results in disallowance of the expense. Budget proposes to widen the ambit of disallowance under the Section 40(a)(ia) by including all amounts payable to residents on which tax is deductible
- The amendment is proposed to be effective from FY 2014-15

Disallowance of the entire expense as a consequence of default in TDS was quite harshand therefore the rationalisation of the disallowance would bring relief to taxpayers

Taxation of business income

Tax deduction of expenditure on CSR

- Expenditure on CSR activities has been mandated by the Companies Act 2013. However, there was no clarity on the allowability of such expenditure under the existing provisions of the Income Tax Act
- The Budget proposes to specifically disallow the expenditure in respect of CSR under Section 37 as business expenditure

Corporates have been grudging that CSR provisions in the Companies Act, 2013 are mandatory rather than being recommendatory. The proposal to make such expenses non-deductible will only reiterate the message that this meant to be an appropriation of profits and a way for corporates to give back to the community

Taxation of business income

Dividend distribution tax

- Under the existing provisions, a domestic company is liable for payment of DDT at the rate of 15% on any amount declared, distributed or paid by way of dividends to the shareholders under Section 115-O
- Budget proposes to amend this Section to provide that DDT shall be levied on grossed up distributable amount i.e. the amount distributed and the DDT amount
- This amendment will take effect from 1 October 2014

Mechanism to compute distributed income by mutual funds

- As per the existing regime, the income distribution tax payable by mutual funds is computed on the amount of distributed income. There has been some ambiguity around the term distributed income whether it is to be considered net of additional tax or grossed up. In order to end the uncertainty, the mechanism of computing distributed income for the purpose of discharging additional tax has been proposed. Under the proposed mechanism, the additional tax needs to be computed on the distributed income before deduction of additional tax i.e. after grossing-up
- This provision will take effect from 1 October 2014

Considering the proposed mechanism of computing tax on dividend distribution by corporates and mutual funds, the tax outflow will surely increase

Taxation of business income

Alternate minimum tax

Scope widened

- Under Section 115JC of the Act, AMT is payable by person other than company, on 'adjusted total income', if the tax payable under normal provision is lesser than the AMT so computed
- Budget proposes to add back deduction under Section 35AD (net of tax depreciation, which otherwise would have been available) while computing the 'adjusted total income'

Allowability of credit

- Budget also proposes that the credit of AMT under Section 115JD shall be available even in those assessment years where the adjusted total income does not exceed Rs 20 Lakh or there is no claim made under chapter VI-A or Section 10AA or Section 35AD
- The proposed amendment will take effect from FY 2014-15

Taxation of business income

Change in presumptive income of goods carriage business

- The Act provides presumptive taxation under Section 44AE in respect of assessee who are engaged in the business of plying, hiring or leasing goods carriage. The Bill proposes to increase the amount of presumptive income to Rs 7,500 per vehicle for all types of goods carriage vehicles
- The amendment is proposed to be effective from FY 2014-15

Amendment in definition of non speculative transaction under Section 43

- Budget has proposed that commodity derivatives transactions which are chargeable to commodities transaction tax of Chapter VII to Finance Act 2013, will be considered as non speculative transaction
- This was also earlier clarified by the CBDT while explaining provisions of Finance Act, 2013. This proposed amendment will have retrospective effect and will be applicable from FY 2013-14

Taxation of business income

Investment allowance available to smaller investment

- Investment allowance was available under the existing provisions only if the aggregate investment exceeded Rs 100 crore in FYs 2013-14 and 2014-15
- Budget proposes to extend the investment allowance under Section 32AC to medium size investments in plant and machinery where a company engaged in business of production or manufacture of article or thing, acquires and installs such new plant and machinery in excess of Rs 25 crore in a FY starting from 1 April 2014 till 31 March 2017
- An investment allowance of 15% is proposed on such investments

This tax incentive being extended to medium sized investments by reducing ticket size is a welcome move to encourage the SME sector to modernize

Taxation of business income

Deduction in respect of expenditure incurred for specified business

- Budget proposes to add the following two new businesses as “specified business” under Section 35AD:
  - laying and operating a slurry pipeline for transportation of iron ore
  - setting up and operating a semi-conductor wafer fabrication manufacturing unit notified by the CBDT
- Upfront deduction of 100% of capital expenditure incurred wholly and exclusively for these specified businesses are proposed to be allowable from the year in which it commences operations of the specified businesses
- The existing provision provides for similar deduction for 11 specified businesses, 5 out of which receive upfront deduction of 150% capital expenditure
- It has further been proposed to amend Section 35AD (to cover both 11 existing and 2 new specified businesses) providing that the assessee shall use the assets wholly for specified business for a period of 8 years commencing from the year of its acquisition or construction
- Failure on the part of the assessee to comply with the above will result in taxability of the deduction earlier claimed, reduced by the allowable depreciation, as business income in the year of default
- It is proposed that an assessee claiming deduction under this provision shall not qualify for deduction under Section 10AA
- The amendment is proposed to be effective from financial year 2014-15

Taxation of business income

Units established in SEZ not eligible to claim deduction under Section 35AD

- Section 35AD allows investment linked deduction in respect of profits of certain specified businesses
- Budget proposes that units located in SEZ and claiming deduction under Section 10AA, are ineligible to claim deduction under Section 35AD for such specified business
- This provision will take effect from FY 2014-15

Extension of sunset clause for commencement of business by certain power sector companies for availing deduction under Section 80-IA

- Under Section 80IA, 100% deduction is available for undertakings involved in the business of generation and / or distribution, transmission or distribution of power and commencing operations before 31 March 2014. This tax holiday benefit has now been extended to undertakings commencing operations before 31 March 2017

Tax incentives to power sector are much needed to promote power generation to meet the country's increasing power demand

Business trusts

Introduction of a new taxation regime for REIT and InvTrust (Business trust)

In an effort to boost investments in the real estate and infrastructure sector, the SEBI has proposed to introduce two new categories of investment vehicles, REIT and InvTrust (collectively referred to as 'business trusts')

Salient features of REITs and InvTrust:

- Units of REIT and InvTrust to be listed on recognised stock exchanges in India
- Income bearing assets to be held under Indian Special Purpose Vehicle (SPVs), which in turn would be held by REITs / InvTrust
- Units of REITs / InvTrust to be granted same status as listed equity shares i.e. same levy of STT as well capital gains tax rates
- Swap of shares of SPV by Sponsors for units of REITs / InvTrust would be exempt

In order to facilitate financing and taxation aspects of these business trusts, Budget has introduced a separate regime for taxation of business trusts through introduction of Section 115UA and other enabling provisions in this regard. As per the said provisions, business trusts have been accorded a pass-through status for taxation purposes.

Business trusts

Tax exemption for business trusts and unit holders

- Amendment to Section 10(38) extending capital gains tax exemption to units (being long term capital asset) of a business trust listed on recognized stock exchange and attracting STT
- Insertion of new Section 10(23FC) exempting any interest income of a business trust from a SPV through which the income bearing assets of the business trust are held. The term SPV has been defined to mean an Indian company in which a business trust holds controlling interest and any specific shareholding or interest required by the SEBI regulations under which the SPV is created
- Insertion of new Section 10(23FD) exempting any distributed income (excluding interest income covered under Section 10(23FC)) of a unit holder from business trust

Tax withholding on specified interest income earned by a business trust [Section 194LBA]

- Interest received by a business trust from an Indian company in which such trust holds controlling interest and specified percentage shareholding is not subject to tax withholding by the borrower. Corresponding income is not liable to tax in the hands of business trust
- However, at the time of distributing such interest income to its unit holders, business trusts to withhold tax at the following rates:
  - for resident unit holders - 10%
  - for non-resident unit holders - 5%

These provisions will take effect from 1 October 2014

Business trusts

Special provisions related to REIT/InvTrust [Section 115UA]

Taxability of REITs / InvTrust:

Nature of income	REITs / InvTrust	Unit holders
Interest	Exempt (considered as pass through)	Taxable (on distribution) (Non-resident – 5%, Others – 10%)
Dividend	Exempt	Exempt
Capital Gains on exit by REITs / Invits	At the rates applicable to income under the head capital gains	Exempt (on distribution)
Capital gains on sale of units of REITs / Invits	NA	Long term – exempt Short term – 15% (in case of sponsors long term – 20%, short term – 30%, period of holding and cost of shares of SPV considered)
Any other income	Maximum Marginal Rate	Exempt (on distribution)

Though the tax pass through status has been accorded at REITs / InvTrust level, it is also important that relief be given at SPV level from payment of Dividend Distribution Tax to make this pass through status meaningful. which may lead to some ambiguity. As the regulations are yet to be notified, operational framework of REITs and InvTrusts are yet to be tested

Capital gains

Characterisation of income of Foreign Institutional Investors (FII) as capital gain

- There has been uncertainty on the classification of the income of foreign portfolio investments (referred to as FII) arising from transaction in securities as capital gains or business income.
- In order to bring clarity on this issue, Budget proposes to include securities issued to FII (in accordance with the applicable SEBI regulations) under the definition of capital asset. Accordingly, the income of the FIIs arising from transaction in such securities would be taxed as capital gains.

Brings an end to the apprehensions of the fund managers regarding their presence in India having adverse tax consequences …. Paves way for the fund managers to freely operate out of India.

Capital gains

Revision of period of holding for classification as 'short term capital asset' in case of unlisted securities and units of a debt oriented mutual fund

- Currently, the period of holding for qualifying as short term capital asset is 'not more than 12 months' in the following cases (as against 36 months in other cases):
  - shares held in a company
  - any other security listed on a recognised stock exchange
  - units of the Unit Trust of India or a Mutual Fund
  - zero coupon bonds
- It is proposed to increase the period of holding for qualifying as short term capital assets to 'not more than 36 months' in the following cases:
  - unlisted securities
  - units of a mutual fund (other than equity oriented mutual fund)

The intention of providing shorter period of 12 months was to encourage investment in the stock markets. Thus, benefit to unlisted securities removed

Capital gains

Enhanced compensation on compulsory acquisition

- Budget proposes that compensation received pursuant to an interim order of a court, tribunal or other authority to be deemed to be income chargeable under the head "capital gains" in the year in which the final order is adjudicated by a court, tribunal or other authority
- This provision will take effect from FY 2014-15

The amendment proposes to put an end to the uncertainty in respect of the year in which compensation received will be taxed

Transfer of Government Security

- Transfer of Government securities (carrying periodic interest payouts) between two non-residents not to be considered as transfer for the purpose of taxation under the head of capital gains
- This provision will take effect from FY 2014-15

The proposal to keep transfer of Government securities between two non-residents outside the ambit of capital gains will pave the way for foreign investors to more actively participate in the Government security market

Capital gains

Investment in residential house property

- As per the existing provisions, deduction from capital gains on transfer of certain assets is available in case of investment in **a residential house.** There has been uncertainty whether deduction will be available only in respect of one or more than one residential house properties. The Budget puts an end to this ambiguity by proposing the benefit of exemption from capital gains only if the capital gain arising on transfer of specified long term capital asset is invested in **one residential house situated in India**
- This provision will take effect from FY 2014-15

Investment in specified bonds

- Currently capital gains arising from transfer of long term capital assets, if invested within 6 months from the date of transfer in specified bonds, is exempt from tax provided the amount of investment does not exceed Rs 50 lakh during any financial year
- Budget proposes to provide that the investment made by a tax payer in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year can not exceed Rs 50 lakh
- This provision will take effect from FY 2014-15

This proposal is in response to various rulings and the controversy that arose due to jurisprudence being available both in favor and against the taxpayers. It brings more clarity to the taxpayers and will put an end to future litigation on this count

Capital gains

Long term capital gains on transfer of units - withdrawal of concessional rate

- In case of listed securities, mutual fund units and zero coupon bonds tax on long term capital gains is restricted to 10% of capital gains without the benefit of Indexation. It has been proposed to restrict the benefit of 10% taxation to listed securities (other than units) and zero coupon bonds, as long term capital gains is exempt in case of transfer of an equity oriented fund which are subject to securities transaction tax
- This provision will take effect from FY 2014-15

The amendment seems to be clarificatory in nature as the long term gains on sale of units of equity oriented mutual funds is exempt

Income from other sources

Taxability of advance for transfer of a capital asset

- The Budget proposes to insert a new clause under Section 56(2) of the Act for the taxability of any sum of money received as advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum has been forfeited by the intended seller and negotiations do not result in transfer of such capital asset
- A consequential amendment is proposed in the definition of the term ‘Income'
- The existing provisions of Section 51 of the Act provides that any such advance retained or forfeited is to be reduced from the cost of acquisition/WDV/FMV of such asset. In order to avoid double taxation, the relevant Section proposes that the same shall not be deducted from the cost of acquisition/WDV/FMV of such asset
- The proposed amendment will take effect from FY 2014-15

The proposal to tax advances received on negotiations of unsuccessful transactions widens the scope of income under the head income from other sources. Though, the FM has been careful to ensure that instances of double taxation are avoided by inserting corresponding amendment in other sections

Trusts and institutions

Clarification of term "substantially financed by Government"

- Under Section 10(23C), exemption is available for certain not for profit educational institutions, universities and hospitals existing solely for educational or philanthropic purposes and which are wholly or substantially financed by the Government.
- New explanation has been inserted to Section 10(23C) defining the phrase "substantially financed by Government".
- Substantially financed by the Government *means* Government grants to such university or other educational institution, hospital or other institution which exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.

Since the basis of determining 'substantially financed' has been laid out, it should lead to more clarity for recipient institution

Trusts and institutions

Non-applicability of general exemptions under Section 10 in case of charitable trusts and institutions covered by the provisions of Section 10(23C) or Sections 11 to 13 of the Act:

- The existing provisions provide for exemption of income from property under trust or voluntary contribution to eligible trusts, institutions, etc. subject to fulfillment of prescribed conditions
- There are several issues regarding application of exemption regime of trusts or institutions like non-complying with the specific conditions for exemption as prescribed under the relevant Section
- Taking cognisance of such issues and in a bid to overcome the same, it has been proposed to introduce new sub Section (7) to Section 11 which specifically restricts a trust which has been granted registration to claim benefits under the said Sections 11 to 13, from claiming any exemptions under provisions of Section 10, except for the following:

  a) Exemption under Section 10(1), relating to exemption of agricultural income

  b) Exemption under Section 10(23C), relating to exemptions provided to various funds, institutions, etc. which have been granted by the prescribed authority, specific approval for this purpose

- Similar amendment has also been proposed to Section 10(23C) through introduction of a proviso to Section 10(23C) wherein entities approved for claiming benefit of the said Section would not be eligible to claim exemptions under any other provision of Section 10, except under Section 10(1) of the Act
- The proposed amendment will take effect from FY 2014-15

Trusts and institutions

Depreciation allowance in respect of assets of the Trust

- Under the existing provisions of the Act, the trusts and institutions eligible for exemption under Sections 10(23C) or Sections 11 to 13 of the Act were claiming twofold deduction on the cost of capital asset as:
  - a) 100% exemption on cost of acquisition of the capital asset, being considered as application of income
  - b) Notional deduction by way of depreciation on such capital asset while computing income of the trust
- In order to overcome the above anomaly, it has been proposed to introduce sub clause (6) to Section 11 and Explanation to Section 10(23C), which provide that income for the purpose of application for the trust shall be determined without any deduction by way of depreciation on assets, the cost of acquisition of which has already been considered as application of income for the purposes of the said Sections
- The proposed amendment will take effect from FY 2014-15

This clarification reiterates the intent of the legislation to give benefit and not a notional double benefit

Trusts and institutions

Retrospective applicability of the registration granted to a trust or institution

- Presently, a trust or institution can claim exemptions under Sections 11 and 12 only after being registered under Section 12AA of the Act
- Budget has proposed to amend Section 12A of the Act to extend the benefit of Section 11 and 12 in case of trusts and institutions who are granted registration under the Section 12AA of the Act to earlier assessment years also where:
  a) the assessment for such year is pending before the Assessing Officer as on the date of grant of registration
  b) the objects and activities of the trust or institution in such years are the same on the basis of which registration has been granted
- It has been further proposed that the Assessing Officer shall not have the power to re-open the assessment of such trust or institution for any prior year merely on account of non-registration in those years
- The above provisions would not be applicable in case of a trust or an institution that has previously refused registration under Section 12AA, or the registration for which was cancelled
- The proposed amendment will take effect from 1 October 2014

Beneficial provision as registration under 12AA now applicable to years prior to registration

Trusts and institutions

Cancellation of registration of trust or institution

- Presently, registration once granted to a trust or institution could be cancelled by the Commissioner only where:

    a) The activities of such trust or institution are not genuine

    b) The activities are not being carried out in accordance with the objectives of such trust or institution.

- It is proposed to empower the Principal Commissioner and the Commissioner to cancel the registration of a trust or an institution in case the activities of such trust or institution are being carried out in a manner not eligible for exemption under Sections 11 and 12 of the Act and where such income is applied/ invested in prohibited modes, is diverted for benefit of interested persons, etc.

- The proposed amendment will take effect from 1 October 2014

This widens the powers of the commissioner to check errant trusts who don't undertake genuine activities in accordance with their objects but also are derelict in not complying with the prescribed investment norms

Trusts and institutions

Chargeability of the current provisions of the Act (Section 115BBC)

- Presently if income of any university or educational institution or any hospital or any other institute or any fund or trust (whether charitable or for religious purpose), established for the benefit of the public and not for the purposes of profits, includes anonymous donation, the tax was payable as aggregate of:
  - a) 30% on the amount of aggregate anonymous donations in excess of the higher of:
    - 5% of the total donations received or
    - Rs 1 lakh
  - b) The amount of income-tax with which such trusts or institute would have been chargeable had its total income been reduced by the aggregate of anonymous donation received
- The above provision was providing unintended relief to such trusts or institutions as the amount reduced as anonymous donation from total income would generally be higher than the amount taxed
- Budget proposes to do away with such anomaly and provides that only such amount which has been taxed under clause (a) above, would be allowed as deduction under clause (b)
- The proposed amendment will take effect from FY 2014-15

Transfer pricing

APA

- Budget proposals include introduction of a roll back mechanism in the current APA regime by way of insertion of Section 92CC(9A) of the Act. The salient feature of the provision is:

  – The APA agreement may provide for determination of arm's length price or specify its manner of determination in relation to an international transaction entered during any period up to 4 years immediately preceding the first year for which APA is sought to be applied

  – The roll back would be provided on case to case basis and subject to prescribed conditions and procedures

Incorporation of roll back provision has been on the wish list of taxpayers since the inception of the APA provisions. The proposal to introduce such mechanism signifies government's seriousness in curbing litigation and is a confidence building measure

Deemed international transactions

- "Deemed international transactions" concept stipulates that any transaction between an unrelated party (URP) and an associated enterprise (AE) qualifies as an international transaction if such transaction was a result of a prior agreement/ terms of such transaction were in substance determined between/by such URP and AE (i.e., when a third party is interposed between 2 AEs)
- Earlier, there was a view that such URP had to be a non-resident to fall within above provisions and hence transactions between 2 residents fell outside the purview
- This loophole is now plugged by the clarificatory amendment that stipulates that such URP could be either resident or non-resident [Section 92(B)(2) of the Act with effect from 1 April 2015]

Transfer pricing

Others

- A long awaited request of the industry on replacing the simple arithmetic mean (AM) concept for computing arm's length price (ALP) with an interquartile range (i.e., "Range" concept) has been accepted in line with international best practices
- AM concept for determination of ALP will continue where comparables are inadequate and detailed rules in this regard are to be prescribed
- Multiple year data to be permitted for comparability analysis and relevant provisions to be introduced. However, no details are available as yet

Use of multiple year data for transfer pricing benchmarking purposes addresses another long standing demand of industry as the requirement of using the relevant year data was the critical reason for rejection of transfer pricing studies of taxpayers

Penal provisions

Levy of penalty by TPO

- It is proposed to include TPO in addition to Assessing Officer and Commissioner (Appeals), as a competent authority to levy penalty under Section 271G for non furnishing of documents required under Section 92D (i.e documentation supporting arms length price)
- This provision will take effect from 1 October 2014

Penalty for failure to produce accounts and information

- Currently, as per Section 276D, where the assessee wilfully fails to furnish accounts and documents before the date specified in any notice served on him or fails to comply with a direction issued to him under Section 142(2A), he shall be punishable with imprisonment **or** fine (Rs. 4 to Rs. 10 per day) or both
- The Budget proposes to make this provision stricter by punishing the assessee with both - imprisonment **and** fine. Further, the above method of calculating fine has been removed
- This provision will take effect from 1 October 2014

Penal provisions

Provisional attachment

- Currently, as per Section 281B, the assessing officer, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director may attach provisionally any property belonging to the assessee for an effective period which may extend up to two years
- Budget proposes to extend the period of provisional attachment such that the total period of extension does not exceed two years or up to sixty days after the date of assessment or reassessment, whichever is later
- This provision will take effect from 1 October 2014

Extended validity for demand notice

- A new Section 220(1A) proposes where tax has been demanded and the appeal has been filed by the assessee against the disputed demand, then such demand notice shall remain valid till disposal of appeal by the last appellate authority
- Further, where assessee is required to pay interest on enhanced demand arising out of any appellate order, then such interest is required to be paid from the date of expiry of period as mentioned in the initial demand notice
- This provision will be effective from 1 October 2014

Other provisions

Tax on dividends received from foreign companies

- Section 115BBD of the Act (inserted by Finance Act 2011) provided for the taxability of dividends received by an Indian company from its foreign subsidiaries at a concessional rate of 15%
- This window was initially available for one year, and was subsequently extended for the relevant financial year by Finance Act 2012 and 2013 respectively
- With a view to encouraging repatriation of foreign dividends into the country, Budget now proposes to increase the beneficial rate of 15% to FY 2014-15 and subsequent years without any sunset clause

This is a very welcome step to encourage Indian multinationals to repatriate their profits back in to India

Other provisions

Payments in respect of certain life insurance policies are liable for tax withholding

New Section 194DA proposes tax withholding on payment in respect of life insurance policies where proceeds are not tax exempt

Tax withholding will apply at the rate of 2% on payment in excess of Rs 1 lakh

This provision will take effect from 1 October 2014

Tax withholding on interest income earned by non-resident [Section 194LC]

Tax withholding at the rate of 5% on interest payment to non residents in respect of foreign currency borrowings is proposed to be extended to business trusts, as well

Such concessional treatment is proposed to be applicable for monies borrowed before 1 July 2017 (as against the present time limit of 1 July 2015)

Under existing provisions, apart from foreign currency loan, this reduced withholding tax rate of 5% applies only to interest on long term infrastructure bonds. It is now proposed this benefit to all long term bonds (i.e. whether infrastructure bonds or not)

This provision will be effective from 1 October 2014

This would ease tax burden on long term borrowing

Other provisions

Mode of acceptance or repayment of loans and deposits

Currently, acceptance or repayment of any loan or deposit otherwise than by an account payee cheque or account payee bank draft attract penal consequences

It is proposed that loans and deposits can be accepted or repaid by the use of electronic clearing system through a bank account as well

This provision will take effect from FY 2014-15

Mandatory filing of return of income

Following entities are mandated to file a return of income if their income exceeds maximum amount not chargeable to tax without giving effect to exemption provisions prescribed under Section 10 of the Act

1. Mutual Funds covered under Section 10 (23D) of the Act
2. Securitisation Trusts covered under Section 10(23DA) of the Act
3. Venture Capital Company or Venture Capital Funds covered under 10(23FB)

Infrastructure Investment Trust and Real Estate Investment Trusts are also mandated to file a return of income

This provision will take effect from FY 2014-15

Other provisions

Power of survey

Time frame to retain books of account or other documents procured during the survey proposed to be extended from 10 days to 15 days (exclusive of holidays)

Income-tax authority is empowered to conduct survey on deductor or the collector for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of the Act. However, impounding of books of account and making inventory of cash, stock, etc. is not permitted

This provision will take effect from 1 October 2014

Additional time limit for issue of order deeming person as "assessee in default"

Time limit for passing an order deeming a person as "assessee in default" is extended to seven years from the end of the financial year in which payment is made or credit is given as against the current timelines of two years (where withholding tax statement is filed) / six years (in any other case)

This provision will take effect from 1 October 2014

Other provisions

Reference to Valuation Officer

Budget proposes to substitute the existing provisions under Section 142A and provide a revised framework with respect to when reference is to be made to Valuation Officer

As per Budgetary proposal, the matter can be referred to the VO to estimate value of any asset, property or investment as against current restricted list of bullion, jewellery, etc. Further, maximum time limit of 6 months has been prescribed for the VO to submit its report after giving an opportunity of being heard to the tax payer

This provision will take effect from 1 October 2014

Income computation and disclosure standards

The Central Board of Direct Taxes (CBDT) shall notify "income computation and disclosure standards" which would need to be adhered to while computing taxable income. These standards are to be adhered to for computing income and not for books of accounts

This provision will take effect from FY 2014-15

Indirect tax proposals

Regaining confidence

Indirect tax proposals

Goods & Services Tax - Key pronouncement(s)

- Finance Minister remains ambiguous about effective date and roadmap for introduction of Goods & Services Tax (GST) in the country
- Budget speech indicates empathy towards State Governments' concerns about surrendering taxation jurisdiction and adequate compensation against potential revenue loss from GST introduction
- Finance Minister assures States that "*government will be more than fair in dealing with them*"

It is expected that firm steps expected shall be taken in the next 7-8 months preceding the next budget to carve out concrete roadmap and timelines for implementation of GST

Customs Duty - Key legislative proposals

(Effective from the date of enactment of Budget, unless otherwise mentioned)

- Effective from 11 July 2014, Safeguard Duty levied on inputs/raw materials imported by EOU and cleared into DTA as such or used in the manufacture of final products & cleared into DTA
- The scope of Advance Ruling mechanism expanded to cover Resident Private Limited Companies
- Mandatory pre-deposit of 7.5% of duty and/or penalty for filing Appeal with the Commissioner (Appeals) /Tribunal at the first stage and 10% of the duty and/or penalty for filing second stage appeal before the Tribunal; subject to a ceiling of Rs 10 crore

Benefit to industry through increased scope of settlement commission and for resident companies through advance ruling. However, mandatory pre-deposit may be a dampener to some

Indirect tax proposals

Customs Duty - Key legislative proposals (contd.)

- The Settlement Commission renamed as the 'Customs, Central Excise and Service tax Settlement Commission'
- Tribunal can now refuse admitting an appeal involving duty of up to Rs 200,000 (increased from Rs 50,000)
- Power of the Commissioner of Customs to permit filing of Import manifest after filing of Bill of Entry for Home Consumption withdrawn. Further, Land Customs Station included as a station for filing the Bill of Entry and other import documents
- Date of entry of ''Vehicle'' included as a mode of importation of goods into India for determining rate and tariff valuation. The change has been made to cover instances when goods are imported through the land route
- Earlier requirement of certification by Ministry of Road Transport (or NHAI) for availing customs duty exemption on specified goods required for construction of roads done away with
- Duty free baggage allowances for inbound passengers have been nominally increased from Rs 35,000 to Rs 45,000. However, duty-free allowance cut to 100 cigarettes
- 'Principal' Chief Commissioner of Customs and the 'Principal' Commissioner of Customs introduced; these officers are also proposed to be included in the class of officers enlisted in the regulations

Indirect tax proposals

Customs Duty - Key legislative proposals (contd.)

- Plants & Equipment imported prior to 2008 for use in projects financed by UN or any international organisation, which were subject to non-transferability out of project site, now allowed subject to prescribed conditions
- Provisions of Project Import Regulations, 1986 amended for Metro rail projects used for urban public transport by including State Governments as sponsoring authorities
- Customs duty refund available for import of scientific and technical instruments, apparatus, etc. by public funded and other research institutions, subject to submission of Registration Certificate from Department of Scientific & Industrial Research (DSIR)
- CBEC empowered to condone up to 30 days delay for review by the Committee of Chief Commissioners of Orders passed by Commissioner of Customs
- Customs duties on mineral oils including petroleum & natural gas extracted or produced in the Continental Shelf or the Exclusive Economic Zone of India shall not be recovered for the period prior to 7 February, 2002
  - No suit maintainable against Authority / Tribunal / Court and
  - No refund of duties shall be granted of customs duty already discharged

Indirect tax proposals

Customs Duty - Exemptions
(Effective from 11 July 2014, unless otherwise mentioned)

- Full exemption from Basic Customs duty ('BCD') to:
  - Certain forms of precious and semi-precious stones
  - De-oiled soya extract, groundnut oil cake/oil cake meal, sunflower oil cake/oil cake meal, and others (exemption up to 31 December 2014)
  - Flat copper wire for use in the manufacture of solar photo-voltaic cells
  - LCD and LED TV panels of size below 19 inches
  - Specified parts for manufacture of LCD and LED TVs
  - Colour picture tubes for manufacture of cathode ray televisions
  - Goods imported by National Technical Research Organisation (NTRO)

- Exemption from Special Additional Customs Duty ('SACD') on
  - All inputs/components used in the manufacture of personal computers
  - PVC sheet and ribbon used for the manufacture of smart cards
  - Parts and raw materials required for manufacture of wind operated generators

Special effort made to rectify inverted duty structure and provide thrust to specific sectors

Indirect tax proposals

Customs Duty – Exemptions (contd.)

- With effect from 8 February 2013, full Basic Customs Duty exemption for Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) imported by:
  - Indian Oil Corporation Limited;
  - Hindustan Petroleum Corporation Limited; or
  - Bharat Petroleum Corporation Limited

  (subject to conditions prescribed)
- Full Customs Duty exemption on specified HIV/AIDS drugs and diagnostic kits imported under National AIDS Control Programme (NACP) funded by the Global Fund to Fight AIDS, TB and Malaria (GFATM)

Indirect tax proposals

Customs Duty - Other key changes
(Effective from 11 July 2014 unless otherwise specified)

- BCD introduced on the following imports:

Products	BCD rate
Voice over Internet Protocol equipment, optical transport equipment, IP Radios, switches etc. #	10%
Machinery and equipment required for setting up of compressed biogas plants and on machinery and equipment required for setting up of a project for solar energy production	5%

However, the goods used to manufacture the aforesaid products would be exempt from Customs duty entirely.

- Customs Duty structure on non-agglomerated coal of various types is being rationalised at 2.5% BCD and 2% Additional Customs Duty ('ACD')
- Certain electronic goods such as line telephone sets, sound recording and reproducing apparatus will now attract Education Cess (earlier exempted)
- Concessional BCD of 5% has been proposed on machinery required for setup of compressed Bio-gas plants

Boost to certain domestic manufacturing industries by exempting inputs and levying duty on import of final products

Indirect tax proposals

Customs Duty - Other key changes (contd.)

Particulars	Pre budget BCD	Post budget BCD
Fatty acids, crude palm stearin, RBD and other palm stearin, specified industrial grade crude oils	7.5%	NIL
Crude glycerin	12.5%	7.5%
Crude glycerin used in the manufacture of soaps	12.5%	NIL
Steel grade limestone and steel grade dolomite	5%	2.5%
Battery waste and battery scrap	10%	5%
Coal tar pitch	10%	5%
Specified inputs for manufacture of spandex yarn	5%	NIL
Ethane, propane, ethylene, propylene, butadiene & orthoxylene	5%	2.5%
Methyl alcohol and denatured ethyl alcohol	7.5%	5%
Electrolysers and parts/spares required by caustic soda or caustic potash units and membranes and parts/spares required by industrial plants based on membrane cell technology	5%	2.5%
E-readers	7.5%	NIL
Ships imported for breaking-up	5%	2.5%

Specific Duty reductions across sectors is a welcome move

Indirect tax proposals

Customs Duty - Other key changes (contd.)

Particulars	Pre budget BCD	Post budget BCD
Metallurgical coke	NIL	2.5%
Cut and polished coloured gemstones and non-industrial diamonds	2%	2.5%
Semi-processed, half cut or broken diamonds	NIL	2.5%
Forged steel rings used in the manufacture of bearings of wind operated electricity generators	10%	5%
Flat-rolled products of stainless steel	5%	7.5%

Particulars	Pre budget Export duty rate	Post budget Export duty rate
Bauxite	10%	20%

Minor increase in duty rates on some products, however increase in export duty on Bauxite is a move to ensure abundant domestic availability.

Indirect tax proposals

Central Excise duty - Rate

- The rate of Central Excise duty retained at 12%; education cess of 3% on Excise duty to continue

Central Excise duty - Exemptions

(Effective from 11 July 2014 unless otherwise specified)

- HIV/AIDS drugs and diagnostic kits supplied under National AIDS Control Programme (NACP) funded by the Global Fund to Fight AIDS/TB and Malaria (GFATM)
- Solar tempered glass used in the manufacture of solar photovoltaic cells/modules, solar power generating equipment/system, and flat plate solar collectors
- Machinery, equipment, etc. required for setting up of solar energy production projects
- Backsheet and EVA sheets used in the manufacture of photovoltaic cells/modules and specified raw materials used in their manufacture
- Flat copper wires used in the manufacture of PV ribbons (tinned copper interconnect) for use in the manufacture of solar cells/modules
- Machinery, equipment, etc. required for setting up of compressed biogas plant (Bio-CNG)

Indirect tax proposals

Central Excise duty – Exemptions (contd.)

- Reverse Osmosis (RO) membrane element used in water filtration or purification equipment (other than household type filter)
- Exemption provided on Education Cess (Customs component) on DTA clearances of goods produced in EOU/EHTP/STP
- Unbranded articles of precious metals are exempted from Excise duty from 1 March 2011 to 16 March 2012
- Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) for supply to non-domestic exempted category (NDEC) customers by the IOCL, HPCL or BPCL is exempted from Excise duty from 08 February 2013

Non renewable energy has been promoted extensively by providing exemption to inputs and machinery used in this sector

Indirect tax proposals

Central Excise duty - Legislative amendments

(Effective from the date of enactment of the Budget, unless otherwise specified)

- Valuation Rules have been amended to clarify that cases wherein goods are sold below the manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer, the value of such goods shall be deemed to be the "transaction value"
- Clean Energy Cess on coal, lignite and peat increased from Rs 50 per tonne to Rs 100 per tonne
- Clarification that excise duty exemption is available to subcontractors manufacturing goods and supplied to main contractors under ICB
- Online payment of Excise duty made mandatory to all assessees
- Default in payment of duty will attract penalty of 1% per month or part thereof as opposed to payment of duty on consignment basis
- Central Government empowered to obtain information available with an assessee/ specified authorities (such as State-VAT Departments, Income tax Authorities, Registrar of Companies, etc.)

Relief provided to manufacturing industry with specific amendment to nullify SC judgment which was a source of extensive litigation

Special emphasis to enforce timely and correct compliance through increased penalties and information sharing among tax and regulatory authorities

Indirect tax proposals

Central Excise duty - Key changes in appeal/litigation process

(Effective from date of enactment of Budget, unless otherwise specified)

- The scope of Advance Ruling mechanism expanded to cover Resident Private Limited Companies
- Provision relating to expiry of stay order after 180 days and extension of stay under section 35C of the Central Excise Act has been omitted
- Mandatory payment of pre-deposit on Appeal matters prescribed as under:

Appeal before	Against Order of	Pre deposit payable
Commissioner (Appeals)	Officer lower than Commissioner	7.5% of duty/penalty/both; not exceeding Rs 10 crore
CESTAT	Commissioner of Central Excise	7.5% of duty/penalty/both; not exceeding Rs 10 crore
CESTAT	Commissioner (Appeals)	10% of duty/penalty/both; not exceeding Rs 10 crore

- Discretionary powers of the Tribunal to refuse admission of appeal has been increased from Rs 50,000 to Rs 200,000
- Appeal against Tribunal orders pertaining to determination of taxability or excisability of goods would also lie before the Supreme Court
- Assessee who has not filed periodical returns can approach the Settlement Commission after recording reasons for the same

Condition of pre-deposit at fixed rates have a mixed reaction from industry, especially where the demand is completely on illogical grounds

Indirect tax proposals

Central Excise duty - Key products brought under MRP based Excise duty valuation

- Packaged software or canned software
- Fountain pen ink
- Ball pen ink
- Mobile handsets including cellular phones and radio trunking terminals
- Wireless data modem cards
- Water Filters
- Vaccines
- Surgical and medical examination rubber gloves
- Tooth powder
- Mathematical boxes/ geometry boxes and colour boxes, pencil sharpeners
- Specific refrigerators, freezers and other refrigerating or freezing

Any additional duty impact on such products would need to be seen in light of specific abatements that may be prescribed

Indirect tax proposals

Central Excise duty - Other key amendments

(Effective from the date of enactment of Budget, unless otherwise specified)

- Education Cess and Secondary & Higher Education Cess applicable only in respect of Excise duty on coal and **not** on Clean Energy Cess
- Schedules to Central Excise Tariffs amended in respect of selected goods to match the Unit Quantity Codes prescribed therein with ones that are actually used in trade and commerce to facilitate trade and improve data quality and compliance

Indirect tax proposals

Central Excise duty - Key rate changes

(Effective from 11 July 2014 unless otherwise specified)

Particulars	Pre budget rate	Post budget rate
Pan Masala	12%	16%
Unmanufactured Tobacco	50%	55%
Jarda scented tobacco, guthka and chewing tobacco	60%	70%
Recorded smart cards	2% without CENVAT credit	12%
Recorded smart cards	6% with CENVAT credit	12%
Metal Core PCB and LED driver for use in the manufacture of LED lights and fixtures and LED lamps	12%/10%	6%
Footwear of retail price exceeding Rs 500 per pair but not exceeding Rs 1000 per pair	12%	6%
Branded Petrol	Rs 7.50 per litre	Rs 2.35 per litre
Gloves specifically designed for use in Sports	12%	2%/ 6% with or without Cenvat credit
Specific machinery and its parts used in processing and packaging of agricultural apiary, horticultural, dairy, poultry, aquatic and marine produce and meat	10%	6%

Indirect tax proposals

Central Excise duty - Key rate changes (contd.)

Particulars	Pre budget rate	Post budget rate
Presses, crushers and similar machinery used in manufacture of wine, cider, fruit juices or similar beverages and specific machinery for preparation of meat or poultry, fruits, nuts and vegetables	10%	6%
Cigars cheroot and cigarillos	12% or Rs 1781 per thousand whichever is higher	12% or Rs 2250 per thousand whichever is higher
Cigarettes containing tobacco other than filter cigarettes of length not exceeding 65 millimeters/ exceeding 65 millimeters but not exceeding 70 millimeters	Rs 509/ 1772 per thousand	Rs 990/1995 per thousand
Filter cigarettes of length not exceeding 65 millimeters/ exceeding 65 millimeters but not exceeding 70 millimeters/ exceeding 70 millimeters but not exceeding 75 millimeters	Rs 509/ 1249/ 1772 per thousand	Rs 990/ 1490/ 1995 per thousand
Cigarettes of tobacco substitutes	Rs 1511 per thousand	Rs 2250 per thousand
Cigarillos of tobacco substitutes and other	12% or Rs 1738 per thousand whichever is higher	12% or Rs 2250 per thousand whichever is higher
Forged steel rings used in the manufacture of bearings of wind operated electricity generators	12%	Nil

Additional Excise duty of 5% ad valorem levied on aerated waters containing added sugar.

Indirect tax proposals

Service tax - Rate

- The rate of service tax retained at 12%; education cess of 3% on service tax to continue

Service tax - Exemptions

(Effective from 11 July 2014 unless otherwise specified)

- Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto
- Transportation by rail or a vessel or a goods transport agency for transportation of following goods:
  - Organic manure
  - Cotton, ginned or baled
- Life insurance provided under micro-insurance policy approved by the Insurance Regulatory and Development Authority, with maximum amount of cover of Rs 50,000
- Services by way of loading, unloading, packing, storage or warehousing cotton, ginned or baled

As expected, standard rate has been maintained. However, some relief by widening the exemption base

Indirect tax proposals

Service tax – Exemptions (contd.)

- Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves such as external asset management, custodial services, securities lending services
- Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India

Major relief to tourism industry by exempting services to foreigners in relation to foreign tours

Service tax - Increase in tax base

(Effective from 11 July 2014 unless otherwise specified)

- Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India
- Air conditioned contract carriage used for transport of passengers with or without accompanied belongings
- Service tax on sale of space for online advertisement (applicable from date of enactment of Budget)
- Service tax on "radio taxi" operator services (applicable from date of enactment of Budget)

Widening of tax base by imposing taxability on sale of space on internet, billboards etc. and certain other transportation related services

Indirect tax proposals

Service tax - SEZ benefits – key amendments

(Effective from 11 July 2014 unless otherwise specified)

- Form A-2 to be received within 15 days from the date of submission of Form A-1
- Form A-2 valid from the date of verification of Form A-1
- Service provider providing services without payment of Service tax may provide services based on Form A-1 submitted by SEZ unit or developer
  - In case Form A-2 not received within a period of 3 months of providing services, then service provider shall pay applicable service tax.
- A service shall be treated as used "exclusively" for Authorized Operations only if such services are under an invoice in the name of such Unit or Developer and such service is used only for furtherance of Authorized Operations in the SEZ

Procedural clarification and simplification to help SEZ units/developers in smoothening their operational modalities

Indirect tax proposals

Service tax - Changes in Service tax Abatements

(Effective from 11 July 2014 unless otherwise specified)

- Abatement claim for Goods Transport Agency clarified is subject to non-availment of CENVAT Credit by the service provider (i.e Transport Agent)
- 30% abatement of service tax on chits funds available only if CENVAT Credit of inputs, capital goods and input services are not taken
- Rent-a-cab operator abatement restricted only to motor-cabs.
  - Above abatement available only if CENVAT Credit of inputs, capital goods & input services (other than input service for renting of motor-cab) not taken.
  - Full CENVAT credit of input service of renting of motor-cab is available only if the recipient of service is paying Service tax on 40% of the value.
  - CENVAT credit of input service of renting of motor-cab is available only to the extent of 40% if the recipient of service is paying Service tax on full value.

  (effective from 1 October 2014).
- 60% abatement available for service providers providing transport of passengers, with or without accompanied belongings, by a contract carriage other than motor-cab subject to CENVAT Credit of inputs, capital goods and input services not taken

Welcome relief by way of extension of Cenvat facility to rent a cab operators if services received from same line of business

Indirect tax proposals

Service tax - Changes in Service tax Abatements (contd.)

- Above abatement also applicable to radio taxis
  (effective from a date to be notified after enactment of Budget)
- Abatement on transport of goods by a vessel increased from 50% to 60% (effective from 1 October 2014)
- CENVAT credit towards input service of a tour operator shall be available to service providers providing tour operator services on abated value (effective from 1 October 2014)

Marginal tinkering in service tax abatements appear be a move to negate the impact of taxation on certain services

Indirect tax proposals

Service tax - Interest on delayed payment of service tax

(Effective from 1 October 2014)

- Interest on delayed payment of Service tax will now be calculated at the rate of upto a maximum of 30% in following manner

Period of delay	Rate of simple interest
Upto 6 months	18%
More than 6 months upto 1 year	18% for the first 6 months of delay; and 24% for the delay beyond six months
More than 1 year	18% for the first six months of delay 24% for the delay beyond six months upto one year; and 30% for delay beyond one year

Expansion in coverage of Advance Ruling Authority

(Effective from 11 July 2014)

Resident Private Limited company included in eligible class of persons who can apply for Advance Rulings

Government's focus clear on adherence to compliance timelines by imposing exorbitant interest levy in case of long delays in payment of tax dues

Indirect tax proposals

Service tax - Changes in Place of Provision of Services ('PoPS') Rules

(Effective from 1 October 2014)

- "Intermediaries" such as brokers, agents, etc. who arranges or facilitates supply of goods now taxed based on location of service provider (similar to intermediaries for services)
- PoPS for repair services on goods temporarily imported into India now clarified to be Taxable Territory if such imported goods are actually put to use in India
- PoPS for hiring services of all means of transport, other than aircrafts and vessels (except for yacht) for period up to one month will be the location of service provider

With the increase in scope of intermediary to include service provider in relation to 'goods' , international suppliers to bear the brunt of additional costs

Changes in Point of Taxation ('PoT') Rules

(Effective from 1 October 2014)

- For services covered under "reverse charge", any invoice issued on or after 1 October 2014, and where payment not made within 3 months from invoice date, point of taxation shall be the date immediately following the 3 months
- However, if invoice dated prior to 1 October 2014, then point of taxation will be:
  - If payment made within six months from the date of issue of invoice, then such date of payment;
  - If payment not made within six months from the date of issue of invoice, then point of taxation should be determined as if such rule does not exist

Indirect tax proposals

Service tax - Changes in Service tax Valuation Rules

(Effective from 1 October 2014)

- Taxable value for works contract services, other than "original works" , now deemed to be 70% of total amount charged for the works contract

All Works Contracts other than original works to suffer taxation at 70% as against 60% in case of certain contracts. Thus resulting in higher tax costs for project owners

Amendments to "reverse charge" mechanism

- From 11 July 2014, expansion of full reverse charge on services provided by:
  - Recovery agent to a banking company or a financial institution or NBFC;
  - Director of a body corporate to such body corporate.
- From 1 October 2014, partial reverse charge modified as under:
  - Partial reverse charge ratio for service of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in similar line of business modified to 50:50 from 60:40

Indirect tax proposals

Focus on automation of compliances with e-payment being made mandatory for all, irrespective of status/liability of assessee

Service tax - Procedural changes

- From 1 October 2014 all assessees to pay service tax online
- Rules to be notified separately for applicable foreign exchange rates for service tax purposes rather than reference to rates notified under Customs Act, 1962

Key changes in assessment proceedings

(Effective from the date of enactment of the Budget)

- Time period prescribed within which Revenue authorities shall determine Service tax as under:
  - Within 6 months from the date of notice (if possible) where assessees have limitation to receive Show Cause Notice notice of 18 months; and
  - Within one year from date of notice (if possible) where assessess have limitation to receive Show Cause Notice is 5 years
- Section 80 amended to remove power granted to Revenue authorities to waive 50% penalty in cases where service tax not paid/ short paid by reason or fraud, collusion, etc. but details of transactions are available in specified records
- Additional Commissioner of Central Excise or such other officer notified by CBEC may direct any Central Excise officer to search premises
- Section 5A (2), Section 15A and section 15B of the Central Excise Act, 1944 made applicable to Service tax

Focus on early disposal/ adjudication of SCNs in order to reduce litigation load/ costs

Indirect tax proposals

Service tax - Key changes in assessment proceedings (contd.)

(Effective from the date of enactment of the Budget)

- Section 87 amended to incorporate power to recover dues of a Seller of business from the "goods" of a Purchaser purchased from the Seller, similar to Section 11 of the Central Excise Act, 1944
- Central Government empowered to impose Rules for proper levy and collection of Service tax on persons liable to pay service tax, duty of furnishing information, keeping records and the manner in which such records shall be verified, restrictions on availing CENVAT credit, authorise CBEC officials to issue instructions for incidental or supplemental matters for implementation of the Act

Other key changes

(Effective from 11 July 2014 unless otherwise specified)

- Exemption of 'auxiliary educational services' restricted to following services provided to an educational institution:
  - Transportation of students, faculty and staff;
  - Catering, including mid-day meals scheme sponsored by the Government;
  - Security, cleaning or house-keeping services provided to such educational institution
  - Services relating to admission to, or conduct of examination by, such institution

Ambiguity of ambit of 'auxiliary educational services' now stands clarified

Indirect tax proposals

Service tax - Other key changes (contd.)

(Effective from 11 July 2014 unless otherwise specified)

- Exemption continues for residential or lodging services having declared tariff of a unit of accommodation below Rs 1,000 per day or equivalent
- Exemption by way of services provided to Government or local authority, restricted to specified activities such as public health, sanitation, water supply etc
- CBEC may constitute a Committee as may be necessary under Chapter V of Finance Act, 1994 by issuing only an Order instead of Notification published in the Official Gazette.
- Fees of Rs 500 waived for filing of Appeal for grant of Stay before Appellate Tribunal
- Central Government empowered to issue orders for removal of difficulty of certain provisions inserted vide Budget up to one year from the date when such Bill receives President's assent
- Retrospective exemption provided for taxable services provided by the Employees' State Insurance Corporation, effective prior to 1 July 2012

Indirect tax proposals

CENVAT Credit Rules, 2004

(Effective from 11 July 2014 unless otherwise specified)

- 'Place of removal' specifically defined for the purpose of claiming CENVAT Credit; definition similar to Central Excise Act 1944.
- From 1 September 2014, manufacturer or service provider not eligible to avail CENVAT credit in relation to inputs or input services after 6 months from the date when such claim is eligible (ie any of the dates in documents specified under Rule 9(1) such as invoice, supplementary invoice, bill of entry, challan evidencing payment of tax, etc)
- Assessee can claim CENVAT credit of service tax paid under full reverse charge even though the value for services received is not paid to the vendor
  - Above does not apply for CENVAT credit of service tax paid under partial reverse charge or in cases where vendor charges entire service tax
- CENVAT credit reversed on account of export proceeds not received within 6 months can now be claimed if the said proceeds are received within such additional time as allowed by the RBI (within 1 year from provision of export service)
- CENVAT Credit availed by a manufacturing premise of a LTU not eligible to be transferred to its other unit.

Restriction on time limit of 6 months prescribed for claiming Cenvat of inputs/input services could pose practical challenges for assessees

Discontinuation of facilities to LTUs for inter unit transfer may pose new challenges for assessees availing LTU scheme and could be dampener for new assessees to opt for the same

Our Comments

Views

Our comments

Arun Chhabra

Transfer Pricing regime in India has attracted a lot of attention amongst global investors and not for good reasons. The aggressive implementation of transfer pricing law has led to protracted litigation at all levels requiring huge commitment of resources by taxpayers. This certainly doesn't bode well for an economy which needs investment. Taxpayers have been demanding measures to curb litigation for long and there was a strongly felt need to check the current dispensation.

It is heartening to see the Finance Minister not only acknowledge the issue but also take measures to address the problem at hand. Introduction of roll back provisions, proposal to allow use of multiple year data and adoption of range concept surely send out the desired message. Though the finer details of these proposals would emerge in the next few days, budget announcements have given an insight into the new government's approach towards tax policy and administration and one can realistically hope for a truly non adversarial and business friendly regime.

Amit Sarkar

From an indirect tax perspective, the Finance Minister has extended relief to a few sectors such as power, shipping, auto, consumer durables, etc. However, headline rates have remained unchanged. The present administration carries the expectation of the industry on faster implementation of GST. However, the Finance Minister's comments on GST could have been more specific, rather than the usual ambiguous promises of carrying State Governments together under a broad consensus to create a platform for introduction of GST. The changes in tax assessment, particularly the astronomical interest rates on unpaid service tax dues is likely to take many by surprise…bitter medicine for better days?

Grant Thornton

An instinct for growth™

About **Grant Thornton**

Who we are

A cohesive global organisation and leading professional services firm in India

What we do

Provide solutions through a range of assurance, tax and advisory services

ASSURANCE

In an era where investors and other stakeholders demand transparent financial reporting, we provide our clients with a robust audit.

- Attest Services
- Financial Reporting Advisory Services

TAX

We work with businesses to develop bespoke tax compliance & planning strategies best suited to their specific business needs. Our solution-oriented approach is designed with a focus to help minimise taxation related challenges.

- Direct Tax
- Compliance & Outsourcing
- Indirect Tax
- Transfer Pricing
- US Tax

ADVISORY

We work with businesses from the initial concept stage, assessing the feasibility of their business plan right through to developing and supporting the growth and exit strategy.

- Corporate Finance
- Forensics
- Governance & Risk
- Specialist Advisory

Our values

Our CLEARR values unite our people, guide our behaviour and underpin everything we do. As we move forward, these values support our efforts to make a difference to our clients, our colleagues and our communities.

Ask for help, give help
we work well together
COLLABORATION

Find a better way
every time
we never get complacent
EXCELLENCE

Use influence wisely
we own our actions
RESPONSIBILITY

LEADERSHIP
Have courage and
inspire others
we challenge each other to
be the best we can be

AGILITY
Think broadly, act quickly
we thrive in change

RESPECT
Listen and understand,
be forthright we create honest
relationships

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Glossary

Abbreviations	Full form
AE	Associated Enterprise
APA	Advance Pricing Agreement
BCD	Basic Custom Duty
Budget	Finance (No.2) Bill, 2014
CAD	Current Account Deficit
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
DTP	Domestic Tariff Area
EOU	Export Oriented Undertaking
EHTP	Electronic Hardware Technology Park
FM	Finance Minister
FDI	Foreign Direct Investment
FMV	Fair Market Value
FY	Financial Year
GDP	Gross Domestic Product
GST	Goods and Service Tax
ICB	Industry Classification Benchmark
IIM	Indian Institute of Management
IIT	Indian Institute of Technology

Glossary

Abbreviations	Full form
InvTrust	Infrastructure Investment Trust
JNPT	Jawahar Nehru Port Trust
KYC	Know Your Customer
MMDR	Mines and Minerals (Development and Regulations) Act, 1957
MRP	Maximum Retail Price
NHAI	National Highway Authority of India
NH	National Highway
PoPs	Place of Provision of Service
REIT	Real Estate Investment Trust
SEZ	Special Economic Zone
SPV	Special Purpose Vehicle
STT	Securities Transaction Tax
STP	Software Technology Park
VO	Valuation Officer
WDV	Written Down Value