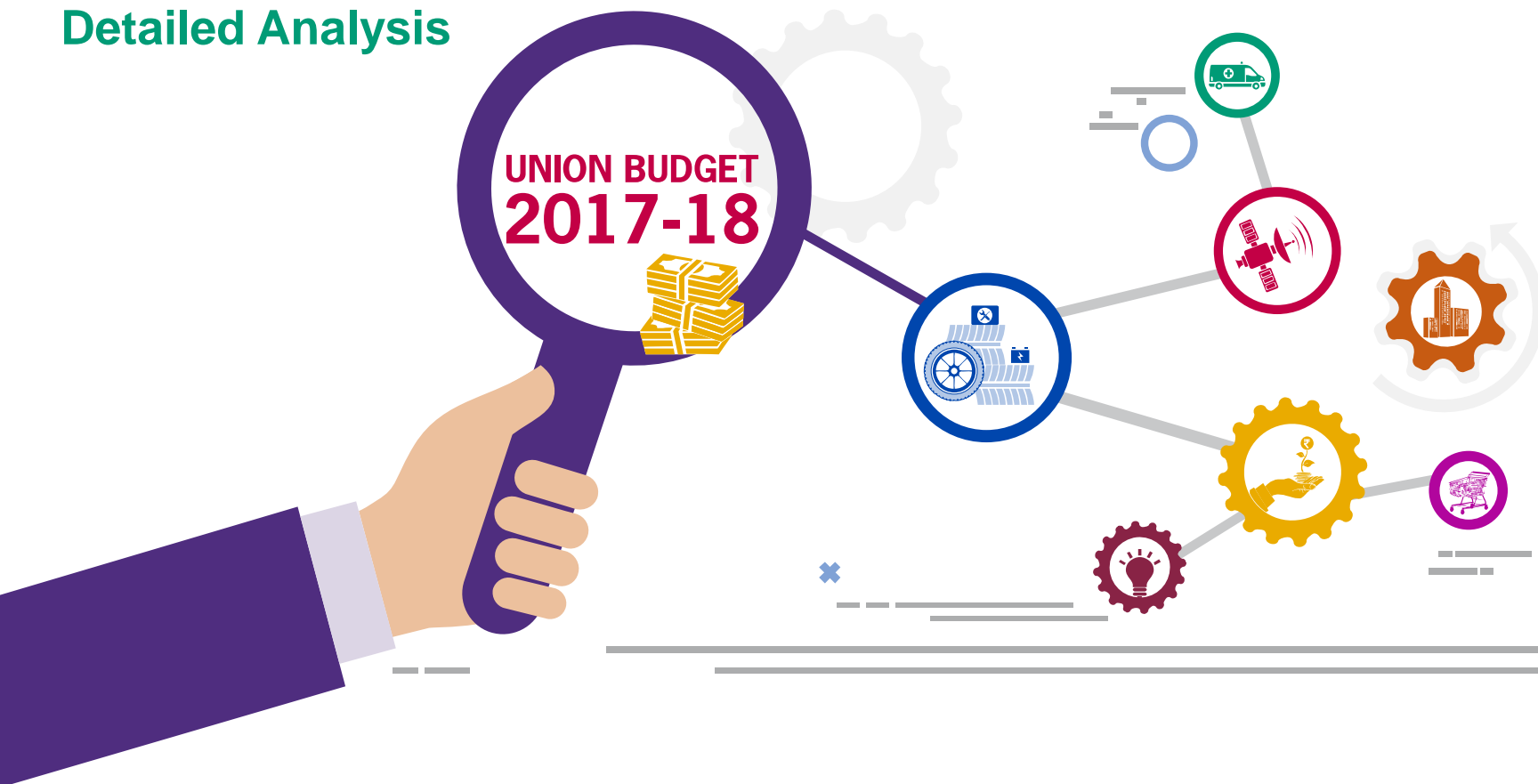


Union Budget 2017-18

Detailed Analysis

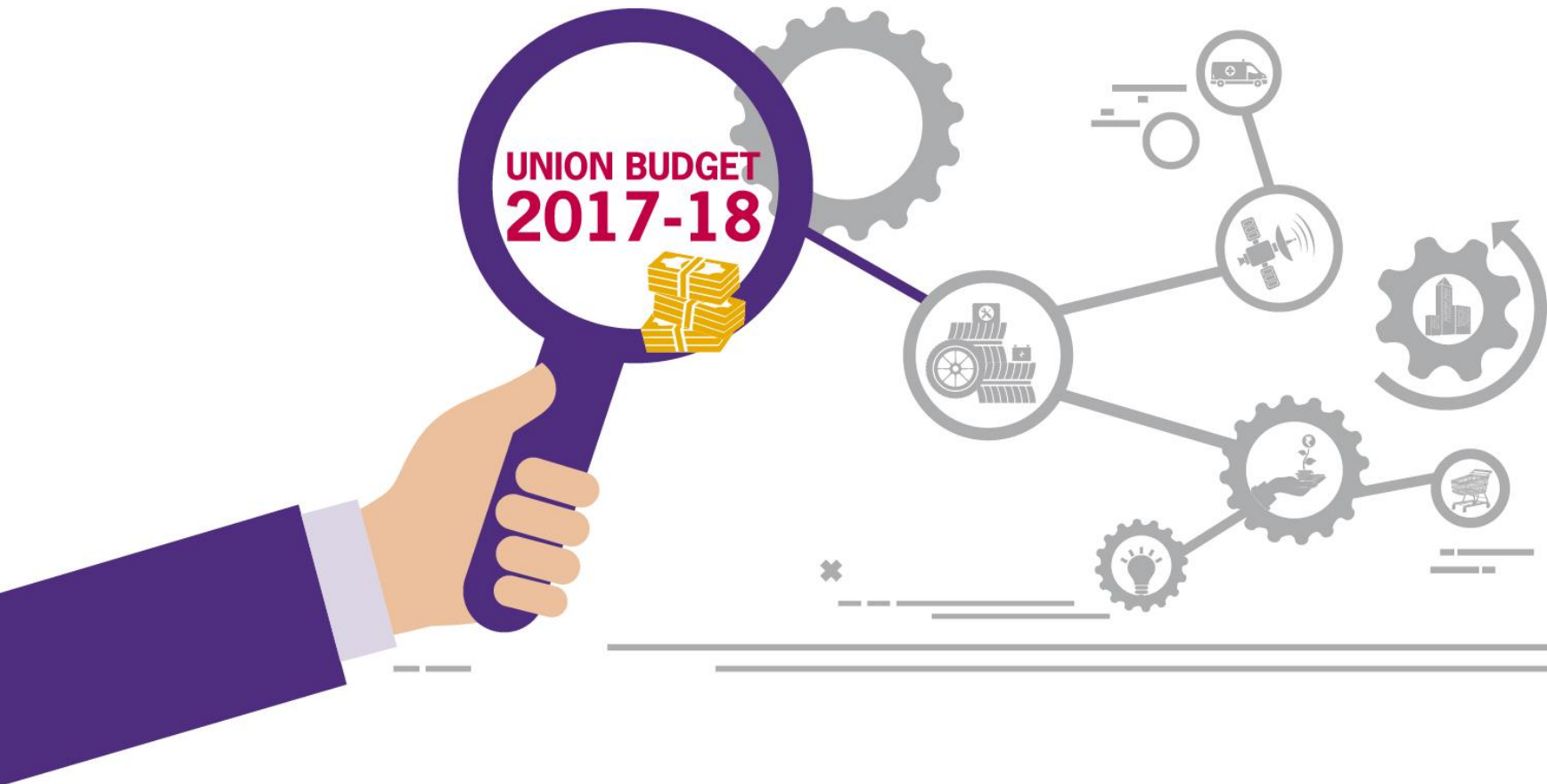


Content

- 01** Direct Tax Proposals
- 02** Indirect Tax Proposals
- 03** Transfer Pricing Proposals



Direct Tax Proposals



Snapshot of Direct Tax Proposals



01	Corporate tax rate for small companies reduced to 25%
02	Reduction in tax rate from 10% to 5% on the first income slab applicable for individuals
03	Taxation of capital gains from property transferred under joint development agreements for individuals/HUFs deferred to the year of completion of project
04	Immovable property held for more than 24 months to be treated as long term capital asset
05	Lower rate of TDS on foreign debt extended till 1st July 2020. Benefit also available to Masala bonds
06	Indirect transfer provisions not to apply to category I & II Foreign Portfolio Investors

Snapshot of Direct Tax Proposals (Contd.)



07	Minimum Alternate Tax provisions amended to provide the framework for computation of book profit for Ind AS compliant companies
08	Receipts of Rs 3 lacs or more in cash prohibited - 100% penalty can be levied
09	Tax holiday window for start-ups extended from 5 to 7 years. Terms for carry forward of loss in case of change on shareholding relaxed
10	PAN to be furnished for collection of tax at source - Higher rate of TCS to apply in case of non compliance
11	Any asset received for less than fair value consideration – benefit taxable in the hands of the recipient for all category of taxpayers
12	Set-off of loss on rental income restricted to Rs 2 Lacs

Direct Tax Rates



Individuals

- Reduction in tax rate from 10% to 5% on the lowest taxable income slab for individuals
- Surcharge of 10% introduced for individuals having total income exceeding Rs 50 lakh but less than Rs 1 crore
- Rebate on income tax reduced from Rs 5,000 to Rs 2,500 provided total income does not exceed Rs 3.5 lakh

Corporates

- Reduction in tax rate from 30% to 25% for domestic companies with total turnover up to Rs 50 crore in FY 2015-16
- MAT rate unchanged but period of availing MAT credit increased from 10 to 15 years
- No change in surcharge and cess

Others

- No changes in rates for other taxpayers

Reduction in individual tax rate will result in a maximum tax saving of Rs 12,500.

Corporate tax rate reduction for MSMEs with income upto Rs 50 crore is a welcome measure although corporate India may be somewhat disappointed with no change in MAT rates.

Additional Resource Mobilisation



Dividend tax extended to other categories of taxpayers

- Currently, tax at the rate of 10% is levied on dividends in excess of Rs 10 lakh received by resident individuals, HUFs and firms. It is proposed to extend this tax to all resident assesses, except domestic company and specified charitable funds/trusts or institutions

The proposal to tax dividend in the hands of shareholder will mainly affect shareholdings held by private trusts

TDS on rental payments by individuals/HUF

- TDS is proposed on rental payments made by individuals and HUF @ 5% on rent exceeding Rs 50,000 per month or part of a month during the financial year
- To minimise compliance burden, TAN would not be required and deduction may be made in the last month of the year or last month of tenancy in case of vacation
- The amendment will be effective from 1 June 2017

TDS compliance extended to all individuals similar to provisions relating to purchase of property

Promoting Real Estate Sector



Tax holiday for affordable housing

- To give a boost to affordable housing, following relaxation is proposed:
 - timeframe of completion of project has been increased from three years to five years
 - The 'built up area' stipulation has been replaced by 'carpet area'
 - peripheral area of metros would now be eligible for maximum unit size of 60 sq m

Notional rental income on unsold inventory

- The deemed rental income on unsold inventory not to be imputed up to one year from the end of the fiscal year in which the certificate of completion is obtained

The amendment helps boost affordable housing sector, especially in the peripheral areas of metros in the backdrop of the sector being given infrastructure status

Promoting Real Estate Sector (Contd.)



Capital gains in case of joint development agreement

- It is proposed that capital gains would be subjected to tax only in the year of receipt of certificate of completion for the whole or part of the project. Salient features of the provisions are as under:
 - **Ambit:** Individual or HUF owner who enters into a registered agreement for development
 - **Incidence:** Year of receipt of certificate of completion for the whole or part of the project
 - **Consideration:** Stamp duty value of land or building as on the date of issue of such certificate of completion as increased by the cash consideration (if any) received
 - **Exclusions:** Where the assessee transfers his share in the project to any other person on or before the date of issue of certificate of completion
 - **Tax withholding:** The payer to withhold tax at the rate of 10% on any monetary consideration payable to the land owner
- Consideration shall be deemed to be the cost of acquisition for the land owner

The amendment seeks to align the point of taxation with completion of the project and as a result, addresses cash flow issues of the stakeholder

Promoting Real Estate Sector (Contd.)



Change in period of holding criteria for immovable property

- With a view to promote investment in real estate sector, it is proposed to reduce the period of holding for immovable property (being land or building or both) to qualify as long term capital asset from the existing 36 months to 24 months

Re-investments for capital gains exemption

- Deploying proceeds from sale of immovable property to specified financial instruments to be notified by the government in due course

“The proposal has the potential to monetise gains from real property.”



Measures For Stimulating Growth (Contd.)



Provision for bad and doubtful debts

- The deduction on account of provision for bad and doubtful debts proposed to be increased from 7.5% to 8.5% of total income. This benefit is available to banks including co-operative banks

Interest on NPAs

- Interest on NPAs is charged to tax on realisation in the case of scheduled banks. This benefit is now proposed to be extended to cooperative banks. As a corollary, interest payable to such institutions would be tax deductible for the payer only upon payment

MAT credit

- The period for carry forward of MAT credit has been extended from 10 years to 15 years
- MAT credit available shall be restricted to the extent foreign tax credits ('FTC') claimed against MAT exceed FTC available under normal tax

The provisions are welcome steps towards boosting the banking sector and supporting start-up ventures.

Measures For Stimulating Growth (Contd.)



Extended tax holiday window for StartUps

- StartUps would be eligible to claim tax holiday for any three consecutive years out of the seven years beginning from the year of incorporation. Currently, the eligibility period is limited to a total of five years

Relaxation of provisions of carry forward and set off in case of eligible StartUps

- In case of the eligible StartUps, carry forward and set off of losses shall be allowed as long as:
 - shareholders holding shares (with voting rights) at year end in which the loss was incurred continue to hold their shares up to the end of the year in which the set off is effected; and
 - such loss sought to be set off should pertain to period of seven years from incorporation
- An exception has also been carved out for excluding change in shareholding pursuant to death or gift to relatives

While the intent appears to provide relief to promoters of StartUps, the proposal may in fact restrict the promoters from cashing out even in part.

Promoting Digital Economy



Presumptive tax - encouraging digital payments

- As a measure towards promotion of digital transactions in small businesses, it is proposed to lower the existing presumptive tax rate of 8% on the total turnover to 6% on non-cash transactions

“Small taxpayers who are not required to maintain books of accounts may find it challenging to avail the benefit of lower rate”

Donations to funds and charitable institutions

- In order to boost cashless transactions, deduction allowable in respect of cash donations for charitable purposes is proposed to be restricted to Rs 2,000 from the current limit of Rs 10,000

Capital expenditure in cash

- Eligible capital expenditure in cash shall not be allowed as a deduction under Section 35AD, where such expenditure exceeds Rs 10,000 per day
- The actual cost of any capital asset shall be reduced to the extent purchased in cash exceeding Rs 10,000 per day for the purpose of calculating depreciation

Promoting Digital Economy (Contd.)



Cash payment disallowed

- Partial disallowance of expenses incurred in cash exceeding Rs 10,000 per day against the current limit of Rs 20,000

Penalty for cash transactions in excess of Rs 300,000

- Cash transactions in excess of Rs 300,000 from a person in a single day or in respect of a single transaction or transactions relating to a single event are proposed to be prohibited
- Non-compliance will attract penalty in the hands of the recipient equivalent to the amount of receipt

Imposition of prohibition on cash receipt is based on recommendation by special investigation team set up by the Supreme Court of India for black money. It should have far reaching impact on cash consumption of luxury items

Anti-abuse Measures



Change or modification of objects of Trusts/Institutions

- Trusts will need to obtain fresh registration in case of change/modification in its existing objects which do not conform to the conditions of previous registration
- The application for obtaining fresh registration is to be made within thirty days from the date of change/modification of objects in the prescribed form and manner

Charitable institutions required to mandatorily furnish tax return

- Charitable institutions required to mandatorily file tax return within the due date to be eligible to claim tax exemption

Donations to funds and charitable institutions

- Deduction allowable in respect of donations in cash for charitable purposes is being reduced from Rs 10,000 to Rs 2,000

Ease of Doing Business



Clarification on indirect transfers

- The Finance Bill 2017 proposes to exclude from the ambit of indirect transfer, any asset which is held by a non-resident by way of investment in a SEBI registered FPI (Category I or II)
- The Amendment will take effect retrospectively from FY beginning 1 April 2011

The Amendment puts to rest the debate created by the circular issued by CBDT in December 2016

TDS on call centre operation business

It is proposed that withholding tax rate shall be reduced to 2% on payments received or credited to a person engaged only in the business of operation of call center

Non applicability of TDS on insurance agents

It is proposed that TDS would not be required on insurance commission received by individuals and HUFs upon furnishing of self declaration in the requisite format

Ease of Doing Business (Contd.)



Tax neutral transfer of rupee denominated bonds by non-residents

- Finance Act, 2016 provided a tax exemption to gains arising to non resident original subscriber of masala bonds (rupee denominated bonds issued overseas) on account of appreciation of rupee
- With a view to further incentivise investments in such bonds, the scope of this exemption is proposed to be extended to secondary holders as well
- Further, the transfer of these bonds from a non-resident to another non-resident has been completely taken out from the ambit of capital gains tax

“The RBI had in 2015 allowed Indian companies to issue rupee denominated bonds overseas. Tax incentives have been further rationalised now to encourage overseas fund raising”

Processing of refund

- Processing of returns and issuance of refunds would be mandatory within one year from the end of year in which the return is furnished
- Withholding of refund in case where scrutiny assessments have been initiated is permitted only in limited cases provided the tax officer is of the view that such grant of refund would adversely impact the interest of the revenue
- Tax officer to withhold refund in such cases with the prior approval of the Principal Commissioner/Commissioner

Ease of Doing Business (Contd.)



Income from transfer of Carbon credits

- Carbon credits are tradable incentives given to undertakings for reduction of certain emissions, which can be transferred to another entity. There have been divergent judicial views on the taxability of income from transfer of Carbon credits as a revenue receipt or capital receipt
- The income from transfer of Carbon credit is proposed to be taxable at a concessional rate of 10% on a gross basis with effect from FY 2017-18. No deduction in respect of any expenditure or allowance shall be allowed while computing such income

“The proposed Amendment brings clarity on taxability of Carbon credits from FY 2017-18 onwards. However, tax dispute for prior years will continue”

Tax neutral conversion of preference shares to equity shares

- It is proposed to specifically exempt the conversion of preference shares into equity shares from the scope of capital gains tax
- Consequential amendments have been proposed in respect of cost of acquisition and period of holding of such equity shares

“This brings the taxability of the conversion of preference shares at par with the conversion of bonds and debentures to equity shares”

Ease of Doing Business (Contd.)



Maintenance of books of accounts

- Threshold to maintain books of accounts for individuals/HUF revised as under –
 - Income - from Rs 120,000 to Rs 250,000
 - Turnover/gross receipts - from Rs 10 lakh to 25 lakh

Presumptive taxation on small businesses

- In case of individuals, HUF and Firms (other than LLPs) that are being taxed on presumptive basis, the turnover threshold for undertaking a tax audit has been doubled from Rs 1 crore to Rs 2 crore

Rationalisation of advance tax payments by professionals

- The option to pay advance tax in a single instalment is proposed to be extended to professionals opting for presumptive taxation

No interest on account of under/non-estimation of advance tax

- It is proposed that interest on short payment of advance tax shall not be levied on such dividend income if the shortfall on payment of advance tax is on account of under estimation or failure in estimation of such dividend income

Authority of Advance Rulings

- The Authority of Advance Rulings for indirect tax and income tax has been combined under a common forum and changes have been prescribed in the qualifications for its members. Consequent changes have been introduced to include applicants under indirect taxes

Ease of Doing Business (Contd.)



Reduction in time limit for furnishing revised return

- Time limit for revision of tax returns has been reduced to the end of the assessment year

Enabling provisions for allowing foreign tax credit in dispute

- It is proposed to enable amendments to assessment orders or intimations for allowing credit of disputed tax paid in foreign jurisdictions upon settlement of such disputes
- Tax credit is proposed to be allowed upon application to the effect being made by tax-payer within six months from the end of the month in which the dispute is settled
- Tax payer is required to furnish proof of settlement of dispute and an undertaking that credit has not been and would not be claimed for any other year



Ease of Doing Business (Contd.)



Nature of assessment	Proposed timelines	Existing
Scrutiny Assessment or Best Judgment Assessment for- <ul style="list-style-type: none"> Assessment Year 2018-19 Assessment Year 2019-20 	<ul style="list-style-type: none"> 18 months from the end of AY in which income was first assessable 12 months from the end of AY in which income was first assessable 	21 months
Re-assessment where notice for re-assessment has been served on or after 1 April 2019	12 months from the end of the FY in which re-assessment notice was served	9 months
Fresh assessment in pursuance of order of ITAT or revision orders	12 months from the end of the FY in which subject order is received/ passed	9 months
Assessment order for giving effect to order of CIT(A)/ITAT/High Court or Supreme Court or revision orders requiring verification or where opportunity of being heard is to be afforded to assessee	12 months from the end of the FY in which subject order is received/ passed	3 months from receipt/passing of order
Assessment for search cases	<ul style="list-style-type: none"> 18 months from the end of FY in which search authorisation was executed; where such authorisations have been executed in FY 2018-19 12 months from the end of FY in which search authorisation was executed; where such authorisations have been executed in FY 2019-20 	21 months
Assessment of person other than the searched party	12 months from the end of FY in which last authorisation was made or subject information/ assets seized/ requisition were handed over to the assessing officer, whichever is later	9 months

Anti-abuse Measures



Corpus donations made by charitable trusts

- It is proposed that when any charitable trust/institution makes a contribution to the corpus of another registered charitable trust/institution, such contribution will not be treated as application of income for charitable or religious purposes
- Similar provisions are applicable where any university/educational institution or hospital/medical institution makes a contribution to a registered charitable trust/institution

Widening scope of income from other sources

- The current provisions to tax receipt of assets for inadequate consideration are sought to be replaced by an encompassing provision which applies to all categories of assesseees and assets. Consequently, transfer of any asset at less than fair market value to a person shall be subject to tax under the head income from other sources
- Specific exemption for transfer under corporate restructuring such as mergers and demergers as well transfers to specified charitable trusts has been provided

Proposed amendments to Section 56 are likely to have far reaching impact on transactions involving corporate gifts, listed securities and private trusts

Anti-abuse Measures (Contd.)



Fair market value to be full value of consideration for transfer of unlisted shares

- With a view to curb understatement of full value of consideration (FVC) for payment of capital gains on transfer of shares, a new section is proposed to be inserted providing deeming provisions for computing FVC of such shares. This is similar to the existing provisions relating to transfer of immoveable property, deeming stamp duty of such property as the FVC
- Snapshot of the proposals:
 - **Ambit:** Transfer of shares of a company (other than quoted shares), where consideration for such shares is less than the Fair Market Value (FMV) of such shares
 - **Impact:** FMV of such shares shall be deemed to be the FVC for computation of capital gains
 - **Meaning of FMV:** Rules with regard to the computation of FMV are yet to be prescribed

“

Interplay of section 50CA and Section 56 on such transfer of shares not quoted would need to be analysed, once the rules for FMV computation are notified

”

Anti-abuse Measures (Contd.)



Long term capital gains on listed shares

- Exemption of long term capital gains from transfer of listed equity shares can be availed on shares acquired on or after 1 October 2004 only if Securities Transaction Tax (STT) has been paid at the time of acquisition
- In order to avoid hardships to genuine cases, government to notify transfers on which this condition shall not apply. Some of the transactions identified in the memorandum are shares acquired in an IPO, FPO, bonus or right issue by a listed company or were acquired by a non-resident in accordance with FDI policy of the government etc.

It is pertinent to note that the government has reserved the right to notify instances where the acquisition were genuine. We hope that instances that are generally exempt from capital gains tax in cases such as merger, demerger, reorganisation, family settlements etc. get notified

Payment of fee for delay in furnishing return of income

- A fee up to maximum of Rs 10,000 is proposed for filing of return of income beyond due date

Penalty on professionals for incorrect certification

- A penalty up to Rs 10,000 is proposed on professionals if they furnish incorrect information in certificates issued by them to the tax department

Rationalisation Measures



Clarification on terms used in DTAA

- In order to avoid litigation on interpretation of terms used in double taxation avoidance agreements (DTAA), a clarificatory amendment is proposed to provide that the terms used in the DTAA shall have the meaning as defined in the DTAA or in case it has not been defined, as defined in the Act or under any explanation given by the government

Deduction from total income of the assessee

- Tax holiday under section 10AA that is available to SEZ units is to be restricted to the total income of the assessee

“The Amendment seeks to overturn the recent Supreme Court ruling in the Yokogawa case where it was held that that deduction in respect of a unit which is eligible for Section 10A benefit is to be computed with respect to such undertaking and before computing the total income of the assessee. Similar principle applied for Section 10AA”

Rationalisation Measures (Contd.)



Clarification regarding date of applicability of concessional 10% tax rate on LTCG

- The Union Budget has proposed to extend the concessional 10% tax rate on LTCG arising to non-residents from transfer of unlisted securities retrospectively w.e.f. 1 April 2013

Cost of acquisition for computation of capital gains on transfer of specified assets held by a trust or institution

- Finance Act, 2016 with effect from 1 June 2016 provided for the taxability of accreted income (being net assets as specified) of a charitable institution on conversion to or merger with a non-charitable organisation at the maximum marginal rate
- Consequential amendment is now proposed to be introduced with retrospective effect as of 1 June 2016 to deem the cost of acquisition for such assets to be the FMV taken into account for computation of the accreted income

Rationalisation Measures (Contd.)



Quoting of PAN under TCS regime

- To strengthen PAN mechanism, a person paying any sum on which TCS is applicable, would need to furnish PAN. A non-resident who does not have a permanent establishment (PE) in India is exempt from furnishing PAN
- Any failure on quoting of PAN would result in collection of taxes at the rate of 5% or twice the rate of TCS, whichever is higher

“An attempt made to bring parity with the current TDS provisions by using PAN as a common interface to link transactions with the tax authorities database”

Restriction on set off of house property losses

- Loss from house property, available for setting off against any other income, has now been limited to Rs 2 lakh

“This proposal would increase tax burden on the individuals servicing large housing loans”

Rationalisation Measures (Contd.)



Base year for indexation shifted from 1981 to 2001

- It is proposed to shift the base year for calculation of capital gains in respect of assets from 1 April 1981 to 1 April 2001
- Consequential amendment proposed under computation provisions to align the provisions relating to cost inflation index to the proposed base year

“In effect, cost of acquisition of an asset acquired before 1 April 2001 would be allowed to be taken as the original cost of acquisition or FMV as on 1 April 2001 at the option of the assessee. Accordingly, cost of improvement would include only those capital expenses which are incurred after the said date”

Clarificatory amendments for cost of acquisition in specified cases

- Clarificatory amendments introduced in relation to cost of acquisition of assets including shares in an Indian company issued in case of tax neutral demerger of a foreign company, units in consolidation of plans within a scheme of mutual funds, etc.

Interest on refund of withholding tax

- Interest on refund at the simple rate of one-half percent for every month or part thereof is proposed to be payable to the deductor

MAT – Book profits as per Ind AS



Alignment of MAT provisions with Ind AS

- Adjustments proposed to be made in case of companies required to draw up books as per Ind AS
- Adjustments to profit as per the Profit and Loss Account ('P&L') to continue in accordance with the existing MAT provisions
- New sub-section inserted to provide for adjustments being made in Other Comprehensive Income (OCI). Adjustments to be made are as follows:

Items	Adjusted to book profit of the year
Amount adjusted in OCI which would subsequently be re-classified to P&L	In which reclassified to P&L
Changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible Assets [Ind AS 16/ 38]	In which such assets/investments are retired, disposed, realised or otherwise transferred
Gains and losses from investment in equity instruments designated at FVOCI [as per Ind. AS 109]	
Re-measurement of defined benefit plans [Ind. AS 19]	Every year as the re-measurement gains and losses arise
Any other items	Every year as the re-measurement gains and losses arise

- Specific adjustments provided in case of demergers

MAT – Book Profits as per Ind AS (Contd.)



One time adjustment in the year of convergence

- One time adjustment to be taken as of **31 March 2016**
- Adjustments to book profits on account of first time adoption of Ind AS to be made as under:
 - OCI adjustments in respect of assets and investments in subsidiaries to be in line with the year on year treatment discussed earlier
 - Book profit adjustment in relation to other assets, including defined benefit plans, to be spread equally over five years
 - Adjustment to reserves which will never be reclassified to P&L to be spread equally over five years excluding the following
 - Adjustment on account of revaluation of assets to be ignored both for depreciation as well inclusion in profits. However, the gains/losses on disposal/retirement to be computed ignoring revaluation adjustments
 - Fair valued Investment in subsidiaries to be included in book profit in year of realisation of such investment
 - Similar treatment for translational differences for foreign operation

The long awaited clarification on impact of Ind AS on MAT has finally been brought in the Finance Bill 2017. However, the proposed legislation requires deep analysis and may require further clarifications



Benefit for NPS Subscribers



Exemption on partial withdrawal

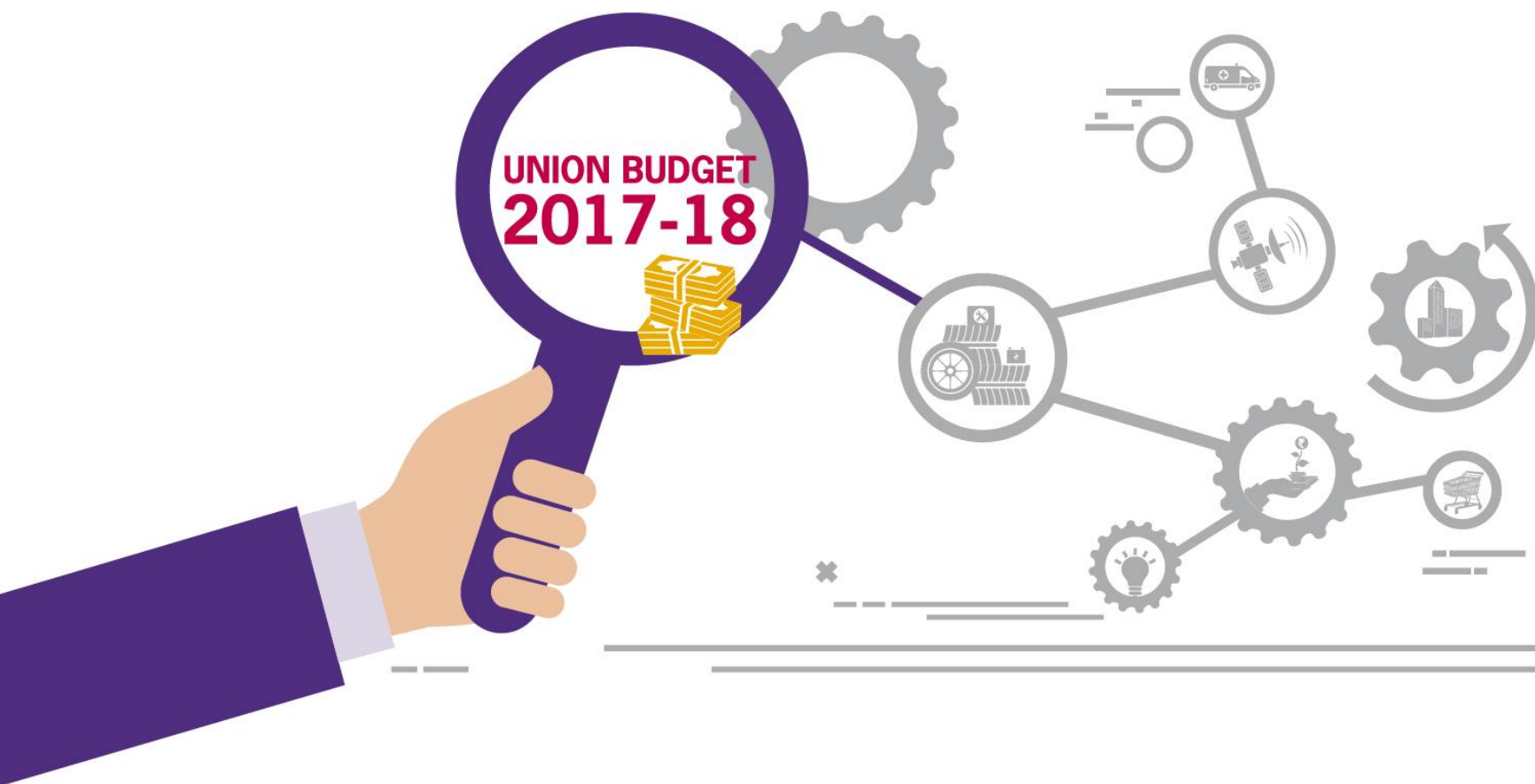
- Partial withdrawal of pension by an employee from the National Pension Scheme exempt provided it does not exceed 25% of the contributions made by him

Deduction on contributions made

- Amount of deduction for non-employee contributors to National Pension Scheme increased from the current 10% to 20% of Gross Total Income



Indirect Tax Proposals



Snapshot of Indirect Tax Proposals



01	Consensus between Centre & States largely on all GST issues, but indicative revised implementation date of 1 July 2017 not re-affirmed
02	No tinkering of base rates for customs duty, central excise duty and service tax, however certain specific changes to correct inverted duty structure
03	Research and Development Cess on import of technology (currently at 5%) to be repealed from 1 April 2017
04	Advance Ruling for all central levies to be adjudicated commonly by Authority established under Income Tax Act, 1961
05	Coverage of importer and exporter to extend to beneficial owners who exercise control over goods under customs law
06	Provisions of Settlement Commission extended to cover non-assesseees including co-noticees

General



General

- No tinkering of base rates for customs duty, central excise duty and service tax

Goods and Services Tax

- Consensus between Centre & States largely on all issues, however, indicative revised implementation date of 1 July 2017 not re-affirmed
- Work on IT system and finalisation of legislations on track
- Extensive awareness drives for trade and industry to commence from 1 April 2017

Industry would need to plan their GST transition strategies within the next few months in order to be prepared for 1 July 2017 implementation

General (Contd.)



Common Authority for Advance Rulings for customs, central excise & service tax matters

Effective from the date of enactment of Finance Bill, 2017

- Authority for Advance Ruling merged for all central levies to be adjudicated by Authority of Advance Ruling established under Income Tax Act, 1961 for all pending as well as new applications
- Application fee for seeking advance ruling increased from Rs 2,500 to Rs 10,000
- Authority to accordingly pronounce ruling within six months (as against existing 90 days)

“
Merger of Authority for Advance Ruling is a welcome step to encourage ease of doing business.
”

Service Tax



Service Tax rate

- No change in general service tax rate

Research & Development Cess

Effective from 1 April 2017

- No Research & Development Cess on import of technology (currently at 5%)

New exemptions introduced

Effective from 2 February 2017

- Life insurance services provided by the Army, Naval and Air Force Group Insurance Funds retrospectively from 10 September 2004 (with refund of tax earlier paid, if any)
- Services provided to government by way of transportation of passengers by notified airlines under Regional Connectivity Scheme for a period of one year from the date of commencement of scheme

“
Removal of R&D Cess would result in
reduction in overall cost of technology
imports for manufacturers
”

Service Tax (Contd.)



Changes in existing exemptions

Effective from date on which Finance Bill, 2017 receives President's consent

- Services provided by way of 'carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption' omitted from the Negative List and now placed under mega exemption notification

Effective from 2 February 2017

- Exemption from service tax extended to all post graduate programmes conducted by IIMs

Extension of existing exemption

Effective from date of enactment of Finance Bill, 2017

- Existing exemption from service tax on upfront amounts payable for long-term lease of industrial plots by state government agencies extended for period from 1 June 2007 to 21 September 2016 (with refund of tax earlier paid, if any)

Rationalisation of exemptions to provide retrospective benefits to certain assesseees

Service Tax (Contd.)



Other legislative provisions

Service tax (Determination of Value) Rules, 2006

Effective from date of enactment of Finance Bill, 2017

- Retrospective amendment to clarify exclusion of value of property in land and undivided share of land from service portion in execution of works contract involving transfer of goods and land with effect from 1 July 2010
- Specific period-wise valuation prescribed, in case gross amount charged includes value of goods as well as land or undivided share of land:
 - 25% of gross amount charged for the period from 1 July 2010 to 28 February 2013
 - 30% of gross amount charged for period from 1 March 2013 onwards
 - For period from 1 March 2013 to 31 March 2016, if carpet area for residential unit is up to 2000 sq. ft. and amount charged is less than a crore, value shall be 25% of gross amount charged

Retrospective amendment on exclusion of value of land likely to result in reduction of overall construction costs and also put to rest valuation related disputes

CENVAT Credit Rules 2004



Proposed changes in CENVAT Credit Rules 2004

Effective from 2 February 2016

- Banking companies, financial institutions and NBFCs required to include value of services by way of extending deposits, loans or advances against consideration in form of interest or discount income for purpose of calculating exempted turnover
- Time limit of three months (extendable up to six months on approval of Commissioner) fixed for disposal of application for transfer of cenvat credit in case of shifting of factory/business premises or change in ownership

Provision for timely disposal of credit transfer applications to aid working capital inflows for acquiring manufacturing/service

Customs Duty



Tariff changes

Effective from date of enactment of Finance Bill, 2017; 2 February 2017

- Certain duty changes made primarily to correct inverted duty structure situations - Refer Annexure I
- Methodology prescribed for easier disposal of goods imported for petroleum and coal bed methane operations under specific duty benefits, on depreciated value basis

Non tariff changes

Effective from date of enactment of Finance Bill, 2017

- Importer and exporter to include the beneficial owner of goods on whose behalf the goods are imported/exported or who exercises effective control over the goods
- Mandatory filing of bill of entry before the end of next day following the day on which goods land at a customs station
- Time limit prescribed for payment of customs duty are as follows:
 - In case of self-assessment – on the date of presentation of bill of entry
 - In cases involving assessment/re-assessment/provisional assessment – within one day from the day on which the officer returns the bill of entry

Responsibility of correct disclosure and compliance on actual beneficiary/controlling party is a measure to check tax evasion and proper tax administration

Central Excise Duty



Tariff changes

Effective from 2 February 2016

- Increase in duty rate of tobacco products changes the duty rates for specific goods primarily relating to renewable energy and digitised technology (Refer Annexure II for duty changes)

Amendments in CEA

Effective from date of enactment of Finance Bill 2017

- Provisions relating to Settlement Commission extended to cover non-assesses including co-noticees

Other amendments

Effective from 2 February 2017

- Time limit of three months (further extendable by six months) prescribed for granting remission of duty in cases of loss or destruction before clearance

Clarification regarding Export Oriented Units [EOUs]

- Exemption restrictions on clearance by EOU to DTA not to apply for procurements of raw materials on duty free/concessional rate basis, subject to conditions

Expansion of Settlement Commission ambit and timely remission of duty are measures to enable ease of doing business

Annexure I – Customs Duty



Key rate changes

Description of goods	Pre-budget	Post-budget
Export duty		
Other Aluminium ores, including Laterite	Nil	15%
Import duty		
Digital equipment/Electronics/Hardware		
Miniaturised POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, finger print reader/scanner or iris scanner	As applicable	BCD- Nil CVD- Nil* SAD- Nil
Parts and components for manufacture of miniaturised POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, finger print reader/scanner or iris scanner, subject to actual user condition	As applicable	BCD- Nil CVD- Nil* SAD- Nil
PCBs for the manufacture of mobile phones, subject to actual user condition	SAD- Nil	SAD- 2%*
All parts for manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	As applicable	BCD- 5% CVD- 6%*

*The concessional/nil rate of duty will be valid till 30 June 2017

Annexure I – Customs Duty (Contd.)



Key rate changes (Contd.)

Description of goods	Pre-budget	Post-budget
All inputs for use in the manufacture of LED driver and MCPCB for LED lights or fixtures, including LED lamps, subject to actual user condition	As applicable	BCD- 5%
Energy		
Liquefied Natural Gas	BCD- 5%	BCD- 2.5%
Solar tempered glass for use in the manufacture of solar cells/panels/modules subject to actual user condition	BCD- 5%	BCD- Nil
Parts/raw materials for manufacture of solar tempered glass for use in solar PV cells/modules, solar power generating equipment or systems, flat plate solar collector, and panel for water pumping and other applications, subject to actual user condition	CVD- 12.5%	CVD- 6%
Resin and catalyst for manufacture of cast components for WOEg, subject to actual user condition	BCD- 7.5% CVD- 12.5% SAD- 4%	BCD- 5% CVD- Nil* SAD- Nil*
All items of machinery required for fuel cell based power generating systems to be set up in the country or for demonstration purposes, subject to certain specified conditions	BCD- 10% / 7.5% CVD- 12.5%	BCD- 5% CVD- 6%

*The concessional/nil rate of duty will be valid till 30 June 2017

Annexure I – Customs Duty (Contd.)



Key rate changes (Contd.)

Description of goods	Pre-budget	Post-budget
Chemicals		
o-Xylene	BCD- 2.5%	BCD- Nil
MTA & QTA	BCD- 7.5%	BCD- 5%
Ethyl Anthraquinone for use in manufacture of hydrogen peroxide, subject to actual user condition	BCD- 7.5%	BCD- 2.5%
Clay 2 Powder (Alumax) for use in ceramic substrate for catalytic convertors, subject to actual user condition	BCD- 7.5%	BCD- 5%
VPEG for use in manufacture of Poly Carboxylate Ether, subject to actual user condition	BCD- 10%	BCD- 7.5%
Metals		
Silver medallion, silver coins having silver content not below 99.9%, semi-manufactured form of silver and articles of silver	CVD- Nil	CVD- 12.5%

Annexure I – Customs Duty (Contd.)



Key changes in BCD

Description of goods	Pre-budget	Post-budget
Co-polymer coated MS tapes/stainless steel tapes for manufacture of telecommunication grade optical fibres or optical fibre cables, subject to actual user condition	BCD-Nil	BCD- 10%
Nickel	BCD-2.5%	BCD- Nil
MgO coated cold rolled steel coils for use in manufacture of CRGO steel, subject to actual user condition	BCD- 10%	BCD- 5%
Hot rolled coils, when imported for use in manufacture of welded tubes and pipes falling under heading 7305 or 7306, subject to actual user condition	BCD- 12.5%	BCD- 10%
Miscellaneous		
Membrane sheet and tricot/spacer for use in manufacture of RO membrane element for household type filters, subject to actual user condition	CVD- 12.5%	CVD- 6%
De-minimise custom duty exemption limit for goods imported through parcels, packets and letters	Duty payable not exceeding Rs 100 per consignment	CIF value not exceeding Rs 1000 per consignment

Annexure II – Central Excise Duty



Changes in the BED for goods related to renewable energy sector

Description of goods	Pre-budget	Post-budget
Solar tempered glass for use in solar PV cells/modules, solar power generating equipment or systems, flat plate solar collector and panel for water pumping and other applications, subject to actual user condition	Nil	6%
Parts/raw materials for manufacture of solar tempered glass for use in solar PV cells/modules, solar power generating equipment or systems, flat plate solar collector, and panel for water pumping and other applications, subject to actual user condition	12.5%	6%
Resin and catalyst for manufacture of cast components for WOEG subject to actual user condition	12.5%	Nil
All items of machinery required for fuel cell based power generating systems to be set up in the country or for demonstration purpose	12.5%	6%
All items of machinery required for balance of systems operating on biogas/bio-methane/by-product hydrogen	12.5%	6%

Annexure II – Central Excise Duty (Contd.)



Changes in the BED for goods related to digitised technology

Description of goods	Pre-budget	Post-budget
Miniaturised POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, finger print reader/scanner or iris scanner	12.5%	Nil
Parts and components for manufacture of miniaturised POS card reader for m-POS (not including mobile phones, or tablet computers), micro ATM as per standards version 1.5.1, finger print reader/scanner or iris scanner, subject to actual user condition	12.5%	Nil



Annexure II – Central Excise Duty (Contd.)



Changes in the BED for other goods

Description of goods	Pre-budget	Post-budget
Membrane sheet and tricot/spacer for use in manufacture of RO membrane element for household type filters, subject to actual user condition	12.5%	6%
All parts for manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	12.5%	6%
a. Waste and scrap of precious metals or metals clad with precious metals arising in course of manufacture of goods falling in Chapter 71 b. Strips, wires, sheets, plates and foils of silver c. Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire d. Silver coin having purity of 99.9% and above, bearing a brand name when manufactured from silver on which appropriate duty of customs or excise has been paid	Nil	Nil**

** subject to the condition that no credit of duty paid on inputs or input services or capital goods has been availed by manufacturer of such goods

Annexure II – Central Excise Duty (Contd.)



Changes in the rate of BED for tobacco products

Description of goods	Pre-budget	Post-budget
Cigar and cheroots, cigarillos, cigarillos of tobacco substitutes, Others of tobacco substitutes	12.5% or Rs 3755 per thousand, whichever is higher	12.5% or Rs 4006 per thousand, whichever is higher
Cigarettes of tobacco substitutes	Rs 3755 per thousand	Rs 4006 per thousand
Paper rolled biris – handmade	Rs 21 per thousand	Rs 28 per thousand
Paper rolled biris – machine made	Rs 21 per thousand	Rs78 per thousand

Annexure II – Central Excise Duty (Contd.)



Changes in the rate of AED (health cess) for tobacco products

Description of goods	Pre-budget (Rs per thousand)	Post-budget (Rs per thousand)
Non-filter cigarettes of length not exceeding 65 mm	Rs 215	Rs 311
Non-filter cigarettes of length exceeding 65mm but not exceeding 70mm	Rs 370	Rs 541
Filter cigarettes of length not exceeding 65mm	Rs 215	Rs 311
Filter cigarettes of length exceeding 65mm but not exceeding 70mm	Rs 260	Rs 386
Filter cigarettes of length exceeding 70mm but not exceeding 75mm	Rs 370	Rs 541
Other cigarettes	Rs 560	Rs 811
Non-filter cigarettes of length not exceeding 65mm	Rs 215	Rs 311
Non-filter cigarettes of length exceeding 65mm but not exceeding 70mm	Rs 370	Rs 541

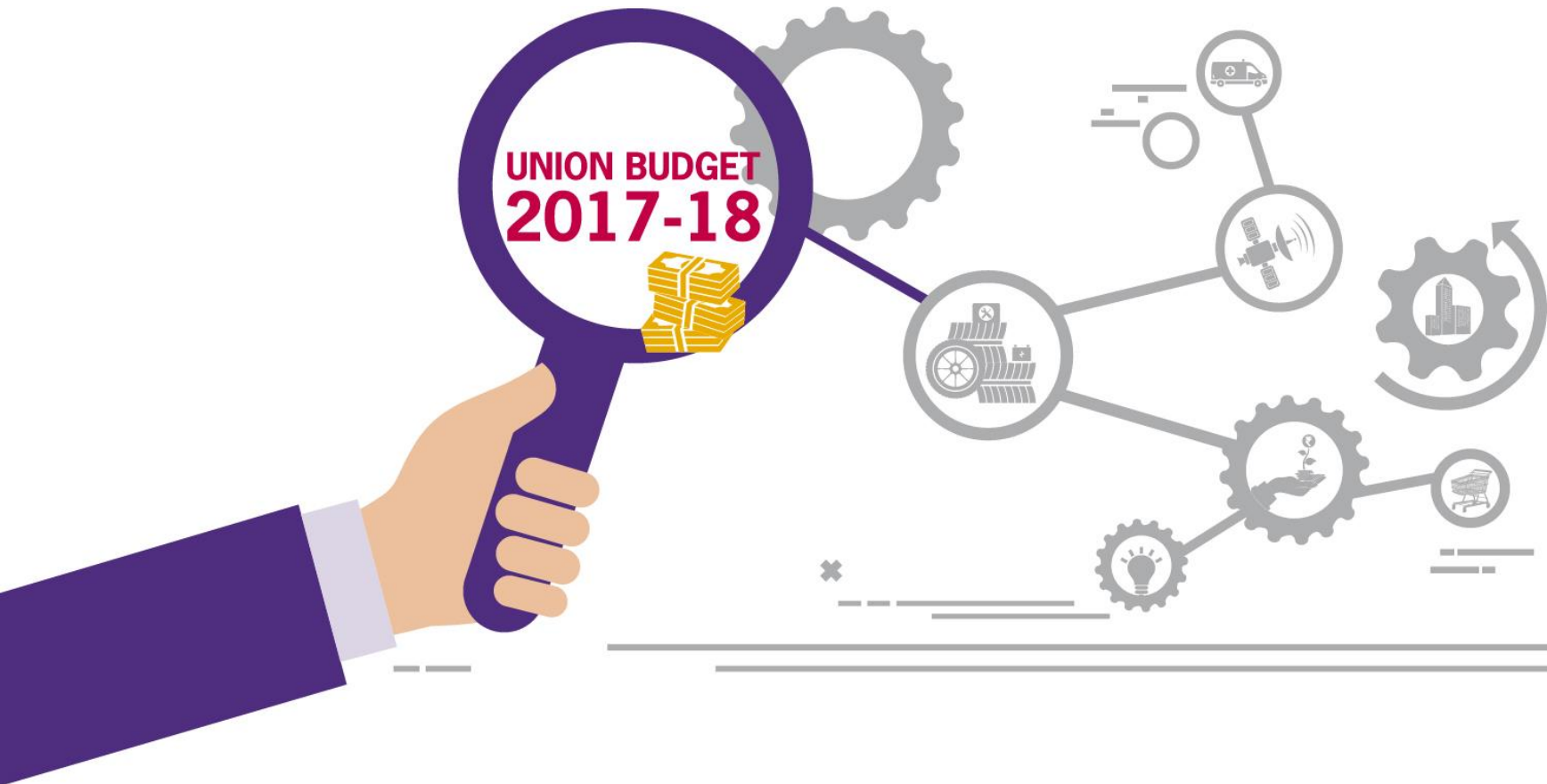
Annexure II – Central Excise Duty (Contd.)



Changes in the rate of AED (Health Cess) for tobacco products (Contd.)

Description of goods	Pre-budget (Advalorem rate)	Post-budget (Advalorem rate)
Chewing tobacco (including filter khaini)	6%	12%
Jarda scented tobacco	6%	12%
Pan masala containing tobacco (Gutkha)	6%	12%
Pan masala	6%	9%
Non-manufactured tobacco	4.2%	8.3%

Transfer Pricing Proposals



Snapshot of Transfer Pricing Proposals



- | | |
|-----------|---|
| 01 | Proposal to reduce the burden of compliance for the assessee by limiting the scope of specified domestic transactions to those undertaken by entities availing profit-linked deductions |
| 02 | Proposal to introduce secondary adjustment by mandating adjustment in books of account of the taxpayer and the AE, where a transfer pricing adjustment is made under prescribed circumstances |
| 03 | Proposal to cap interest expenses to 30% of earnings before interest, taxes, depreciation and amortisation (EBITDA) in a year, where payment is made to Associated Enterprises (AE/s). Threshold applicability of Rs 1 crore prescribed |

Transfer Pricing Proposals



Specified domestic transactions as defined under Section 92BA

- Finance Bill 2017 excludes expense payment transactions undertaken with persons mentioned under Section 40A(2)(b) from the definition of specified domestic transactions
- Hence, Section 92BA is now proposed to include only the specified transactions undertaken by entities eligible for profit linked deductions
- The aggregate sum of transactions to be covered under this revised Section is unchanged; i.e. Rs 20 crore
- Amendments to Section 92BA to be effective from 1 April 2018



Transfer Pricing Proposals (Contd.)



Introduction of secondary adjustments

- Finance Bill 2017 proposes to introduce a new Section 92CE, whereby an assessee that has undergone Primary Adjustment on account of:
 - suo-moto adjustments in assessee's returned income
 - accepted adjustment made by the Assessing Officer
 - adjustment determined by Advance Pricing Agreement entered
 - adjustment made as defined Safe Harbour Rules in Section 92CB
 - adjustment as a result of resolution of Mutual Agreement Procedureis required to make a secondary adjustment by altering its account books and that of its AE, allocate profits to respective entities for giving effect to the arm's length price determined under primary adjustment
- Where the primary adjustment to transfer price results in availability of excess money with the AE, the same is required to be repatriated within the time period as may be prescribed. Failure to do so shall result in treating it as deemed advance to AE and imputing an interest as may be prescribed
- The provisions of this section does not apply:
 - where the amount of primary adjustment is less than or equal to a crore
 - where the primary adjustment is made for a period before AY 2016-17



- Secondary adjustment is a global phenomenon with different forms. The Finance Bill 2017 proposes to adopt one such form
- Mandatory adjustment in the account books may lead to implementation challenges



Anti-abuse Measures



Limitation of interest deduction on debt from overseas associated enterprises

- A specific anti-avoidance provision is proposed to be introduced to limit the deduction available with respect to interest or similar consideration to specified borrowers in respect of debt from specified lenders
- **Specified borrowers:** Indian companies and permanent establishments (PE) of a foreign company
- **Specified lenders covers:**
 - Debt issued by non-resident associated enterprise (AE)
 - Debt issued by a lender who is not an AE but in respect of which an AE (i) provides an implicit or explicit guarantee to non-associated lender; or (ii) deposits a corresponding and matching amount of funds with the lender
- **Maximum deduction** restricted to 30% of earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to associated enterprise, whichever is less
- **Carry forward of disallowed interest** available upto 8 AYs, against the borrower's business income
- **Monetary threshold for applicability:** Applicable on interest or similar consideration exceeding Rs 1 crore
- **Exceptions:** Not applicable to banks and insurance business

This measure is aligned with Action Plan 4 of OECD Report on Base Erosion and Profit Shifting (BEPS) and introduces a form of thin capitalisation rule in respect of external debt

Glossary



BCD	Basic Custom Duty	AED	Additional Duty of Excise
CVD	Countervailing Duty	BED	Basic Excise Duty
FOB	Free on Board	CEA	Central Excise Act, 1944
LED	Light Emitting Diode	CETA	Central Excise Tariff Act , 1985
MTA	Medium Quality Terephthalic Acid	CER	Central Excise Rules, 2002
PCB	Populated Printed Circuit Boards	FA	Finance Act
QTA	Qualified Terephthalic Acid	IT Act	Income-tax Act, 1961
SAD	Special Additional Duty	NCCD	National Contingent Calamity Duty
VPEG	Vinyl Polyethylene Glycol	SC	Settlement Commission
WOEG	Wind Operated Energy Generators		

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