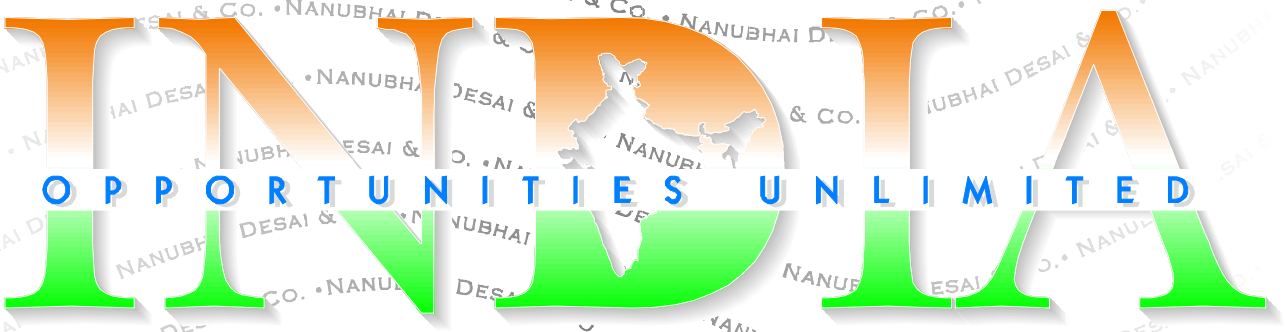

Nanubhai Desai & Co.

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INTRODUCTION

The Economy of India is the seventh largest in the world by nominal GDP and the third largest by purchasing power parity (PPP). The country is one of the G-20 major economies and a member of BRICS (an international political organization of leading emerging economies with members namely Brazil, Russia, India, China & South Africa). India is the nineteenth largest exporter and twelfth largest importer in the world for merchandise.

With 1.2 billion people and the world's fourth-largest economy, India's recent growth and development has been one of the most significant achievements of the times. Over the six and half decades since independence, India has brought about a landmark agricultural revolution that has transformed the nation from chronic dependence on grain imports into a global agricultural powerhouse that is now a net exporter of food. Life expectancy has more than doubled, literacy rates have quadrupled, health conditions have improved. India will soon have the largest and youngest workforce the world has ever seen. At the same time, the country is in the midst of a massive wave of urbanization as some 10 million people move to towns and cities each year in search of jobs and opportunity. It is the largest rural-urban migration of this century. Massive investments will be needed to create the jobs, housing, and infrastructure to meet soaring aspirations and make towns and cities more livable and green.

India enjoyed high growth rates for a period from 2003 to 2007 with growth averaging 9% during this period. Growth then moderated due to the global financial crisis starting in 2008. In 2003, Goldman Sachs predicted that India's GDP in current prices would overtake France and Italy by 2020, Germany, UK and Russia by 2025 and Japan by 2035, making it the third largest economy of the world, behind the US and China. India is often seen by most economists as a rising economic superpower and is believed to play a major role in the global economy in the 21st century.

Starting in 2012, India entered a period of more anaemic growth, with growth slowing down to 4.4%. Other economic problems also became apparent: a plunging Indian rupee, a persistent high current account deficit and slow industrial growth. Hit by the U.S. Federal Reserve's decision to taper quantitative easing, foreign investors had been rapidly pulling out money from India though this has now reversed with the Stock market at near all-time high and the current account deficit narrowing substantially.

This document aims to provide a bird's eye view of the relevant economic facts, policies & laws, which would be of interest to the investors. With the constraints of limited space & large areas of information, this write up could not have been exhaustive.

SOCIAL POLITICAL & ECONOMICAL BACKGROUND

GENERAL

Covering a total land area of approximately 3,290,000 square kilometers, India ranks seventh in the world with regard to area. Being a democratic state, India is governed by the Constitution and its legal framework. India is said to have the longest constitution in the world comprising of 395 Articles and 12 Schedules. The position of the head of state is granted to the President by the constitution. The Parliament comprises of elected members, who in turn elect their leaders to be the Prime Minister and other Ministers of the Country. India is also a member of the Commonwealth. India has 29 states and 7 Union territories and one national capital territory. Each state has its own legislature and elected State Government, which functions in accordance with the Constitution of India, whereas the Union territories are under the jurisdiction of the Central Government.

CURRENCY

The unit of currency is the Indian Rupees (INR). As on 31st July 2015 the Indian Rupee stood at INR 64.0054 against the US Dollar, at INR 99.8356 against the GBP and at INR 70.1627 against the Euro.

PEOPLE AND POPULATION

The rich Indian Culture has attracted the eyes of people all over the world. Indians are known for their hospitality and the warmth that they shower to their guests and business partners. The total English speaking population of the country is the second largest in the world. As per a survey, the total English speaking population in India is higher than the total English speaking population of the whole Europe. This confirms that though Hindi is the official national language, English is the generally accepted business language by Indians. India's population is currently second largest in the world and is over 1.27 billion. Almost three-quarters of this population live in rural areas. The Indian population consists of people of different castes and religions living together in peace. Thus India as a nation stands for Unity in Diversity. India ranks second in overall labour force in the world and its IT skills rank second after the United States.

ECONOMY

The Economic Survey, 2015-16, was tabled in the Parliament by the Hon'ble Finance Minister, Shri Arun Jaitley, on February 27, 2015.

One of the redeeming features, while comparing economic performance across different countries for the year 2014-15, has been the emergence of India among the few large economies with propitious economic outlook, amidst the mood of pessimism and uncertainties that engulf a number of advanced and emerging economies. Brighter prospects in India owe mainly to the fact that the economy stands largely relieved of the vulnerabilities associated with an economic slowdown, persistent inflation, elevated fiscal deficit, slackening domestic demand, external account imbalances, and oscillating value of the rupee in 2011-12 and 2012-13. The latest indicators, emerging from the recently revised estimates of national income brought out by the Central Statistics Office, point to the fact that the revival of growth had started in 2013-14 and attained further vigour in 2014-15. Factors like the steep decline in oil prices, plentiful flow of funds from the rest of the world, and potential impact of the reform initiatives of the new government at the centre along with its commitment to calibrated fiscal management and consolidation bode well for the growth prospects and the overall macroeconomic situation. Encouraged by the greater macro-economic stability and the reformist intent and actions of the government, coupled with improved business sentiments in the country, institutions like the IMF and the World Bank have presented an optimistic growth outlook for India for the year 2015 and beyond.

The possible headwinds to such promising prospects, however, emanate from factors like inadequate support from the global economy saddled with subdued demand conditions, particularly in Europe and Japan, recent slowdown in China, and, on the domestic front, from possible spill-overs of below normal agricultural growth and challenges relating to the massive requirements of skill creation and infrastructural upgradation. The encouraging results from the Advance Estimates for 2014-15 suggest that though the global sluggishness has partly fed into the lacklustre growth in foreign trade; yet this downward pressure has been compensated by strong domestic demand, keeping the growth momentum going.

RECENT GROWTH RECORD

The Advance Estimates of national income for the current year indicate that the positive growth trends that Unravelled in 2013-14 appear to have strengthened in 2014-15 in the industrial and services sectors, with the result that the growth in Gross Value Added (GVA) at basic prices improved by 0.9 percentage points and the Gross Domestic Product (GDP) by 0.5 percentage points in 2014-15. While electricity, gas, and water supply and other utility services are projected to achieve robust growth, manufacturing has gained momentum. Construction has done better while mining and quarrying activities still exhibit a tentative pattern. With appropriate policy changes, coal sector has broken shackles and grew by 9.1 per cent during April-December 2014. However, crude oil, natural gas and refinery products continued the slump, damaging the overall mining story. All major service-sector activities are estimated to have done well in the current year too. Financing, insurance, real estate, and business services, one of the most dynamic sector in the economy in recent years, is reckoned to have driven growth in the current year. The base revision has also shown that the contribution of the agriculture sector to overall (GVA) at factor cost is somewhat higher than was hitherto being shown on the basis of the earlier (2004-05) series. In addition, despite higher growth in services, there has been a realignment of sectoral shares in favour of the industrial sector mainly on account of the correction for under estimation of manufacturing GVA in the old series and over estimation of the trade sector GVA in services.

AGGREGATE DEMAND

The demand side of the Gross Domestic Product (GDP) presented mixed signals in 2014-15. First, the increasing trends in consumption have gradually firmed up, with both private and government consumption growing in strength. Second, the fixed capital formation in the economy has picked up growth but lost share in aggregate demand. Third, there is hardly any support to growth from exports. The deceleration in imports owes substantially to the sharp decline in international oil prices in the current year that compressed the oil import bill. Hence one cautious conclusion could be that the ongoing growth revival is predominantly domestic consumption-driven.

PUBLIC FINANCE

The first nine months of 2014-15 have witnessed some major policy reforms in the subsidy regime; the modified direct benefit transfer scheme has been launched; the new domestic gas pricing policy has been approved; and diesel prices have been deregulated. Fiscal deficit at 100.2 per cent of Budget Estimates (BE) in 2014-15 (April-December) is much higher than the five-year -average of 77.7 per cent. The revenue deficit for April-December 2014 is estimated at 106.2 per cent of BE and is significantly higher than the five-year -average of 81.4 per cent.

PRICES AND MONETARY MANAGEMENT

During the first quarter of 2014-15, Whole sale price (WPI) headline inflation was at 5.8 per cent mainly because food and fuel prices continued to be high. In the second and third quarters of 2014-15, (WPI) inflation declined to 3.9 per cent and 0.5 per cent respectively. WPI headline inflation declined by 0.4 per cent in January 2015 as compared to January 2014. As fuel has larger weight in the WPI, the decline in fuel prices led to a sharper reduction in the WPI as compared to the Consumer Price Index (CPI). Inflation in manufactured products has remained within a narrow

range since 2013-14. CPI inflation has also moderated significantly since the second quarter of 2014-15, with moderation in inflation observed in all the three major subgroups, viz. food and beverages, and tobacco; fuel and light; and others.

MONETARY DEVELOPMENTS

The RBI kept policy rates unchanged during the year till January 2015. With the easing of inflationary conditions, the RBI has signalled softening of the monetary policy stance by cutting policy repo rates by 25 basis points to 7.75 percent in January 2015. Subsequently, the RBI also reduced the statutory liquidity ratio (SLR) by 50 basis points from 22.0 per cent of net demand and time liabilities (NDTL) to 21.5 per cent. The RBI adopted the new CPI (combined) as the measure of the nominal anchor - for policy communication from April 2014. With a view to ensuring flexibility, transparency, and predictability in liquidity management operations, the Reserve Bank revised its liquidity management framework in September 2014. Liquidity conditions have remained broadly balanced during 2014-15 so far, except transient tight conditions. The revised liquidity management framework helped the weighted average cut-off rates in the fourteen-day term repo auctions as well as in the overnight variable rate repo auctions to remain close to the repo rate.

BALANCE OF PAYMENTS

The rupee-US dollar exchange rate has remained broadly stable during the year thanks to the huge inflow of Foreign Direct investment (FDI) and foreign institutional investment (FII) in the equity and bond markets. Due to the weak economic outlook in Europe and Japan, the rupee has appreciated against the euro and yen since September 2014 in tandem with cross-currency movements of the euro and yen vis-à-vis the US dollar. On point-to-point basis the rupee has depreciated by 3.3 per cent from the level of Rs 60.10 per US dollar on 28 March 2014 to Rs 61.76 per US dollar on 13 February 2015. The rupee touched a low of Rs 63.75 per US dollar on 30 December 2014 and a peak of 58.43 per US dollar on 19 May 2014.

EXTERNAL DEBT

India's external debt stock increased by USD 13.7 billion (3.1 per cent) to USD 455.9 billion at end-September 2014 over the end-March 2014 level. The rise in external debt was on account of higher long-term debt particularly commercial borrowings and non-resident Indian (NRI) deposits. The maturity profile of India's external debt indicates the dominance of long-term borrowings. At end-September 2014, long-term debt accounted for 81.1 per cent of the total external debt as against 79.8 per cent at end-March 2014. India's external debt has remained within manageable limits as indicated by the external debt to GDP ratio of 23.5 per cent and debt service ratio of 5.9 per cent in 2013-14. The prudent external debt management policy of the Government of India has helped maintain a comfortable external debt position.

OUTLOOK FOR 2015-16

The macroeconomic situation in India has improved significantly during the current year. The release of the new series of national accounts revealed that the economy has been performing much better than what was being depicted earlier. The steady acceleration in services and manufacturing growth in the face of subdued global demand conditions point to the strengthening of domestic demand. Most of the buoyancy in domestic demand can be traced to consumption. Investment activity, which is slowly picking up, needs to be grounded on a stronger footing. The savings-investment dynamics will be crucial for the growth to strengthen further in the coming years, in addition to reversal of the subdued export performance being currently witnessed. The key will be the response of savings to improved price and financial market stability, and of investment, particularly in the crucial infrastructure sector, to reform efforts of the Government that are underway.

On the supply side, there are concerns about tentative growth patterns in construction and mining activities that need to be addressed to. This is particularly important in view of the strong inter sectoral linkages that these sectors have. The farm sector suffered from a relatively poor monsoon, but there are no indications of

its spill over to be next year. The improving rate of value addition in the economy, represented by the ratio of value added to output, and the falling incremental capital output ratio indicate better resource use in production.

On the global front, the United States radiates confidence and strength, while some other structurally important economies like China, Russia, Euro area and Japan face uncertain prospects, thereby affecting global growth and investment outlook. The sharp decline in oil prices has provided an incentive for overall global growth and stability. At the same time, it has diminished fortunes of oil exporting countries that can influence economic activity adversely.

In the light of the Government's commitment to reforms, along with the improvements in the price and external sector scenarios including the possibility of international oil prices remaining generally benign, the outlook for domestic macroeconomic parameters is generally optimistic, notwithstanding the uncertainties that could also arise from an increase in the interest rates in the United States and situation prevailing in Greece within Euro-zone. Given the above, and assuming normal monsoons better prospects in the world economy that could provide impetus to higher exports for Indian products and services, a growth of around 8.5 per cent is in the realm of possibility in 2015-16.

SECTORAL DEVELOPMENTS

AGRICULTURE

As per the second Advanced Estimates released by the Ministry of Agriculture on 18 February 2015, total production of food grains during 2014-15 is estimated at 257.1 million tonnes. Agriculture and food sectors need huge investment in research, education, extension, irrigation, fertilizers, and laboratories to test soil, water, and commodities, and warehousing and cold storage. Rationalization of subsidies and better targeting of subsidies would generate part of the resources for public investment.

There are wide differences in yields between states. Even the best of states have much lower yield in different crops when compared to the best in the world. This provides ample opportunity to increase production by bridging the yield gap to the extent feasible within the climatic zone. Providing irrigation can improve yield substantially, as vast cropped area is still unirrigated. For a shift in production function, investment in basic research would be necessary.

Recommendations of the Shanta Kumar Committee provide useful suggestions for the future road-map of food policy. Every effort should be made to bring states on board for creating a national common market for agricultural commodities. Distortions emerging from various policies, including exempting user charges for electricity and water should be removed. For providing efficient advance price discovery to farmers and enabling them to hedge price risk, the Forward Markets Commission should be strengthened and empowered to regulate the market more effectively.

INDUSTRIAL, CORPORATE, AND INFRASTRUCTURE PERFORMANCE (IIP)

In terms of use-based classification of the IIP, basic goods and capital goods witnessed marked improvement in growth during April- December 2014-15. While the growth in intermediate goods remained sluggish, consumer goods contracted in April-December 2014-15, particularly due to contraction in the consumer durables sector.

Growth in infrastructure, based on an index of eight core industries, has improved slightly to 4.4 per cent during April-December 2014-15 as compared to 4.1 per cent in the same period in 2013-14. The performance of coal, electricity, and cement has shown marked improvement, steel and refinery products have grown marginally by 1.6 per cent and 0.2 per cent, while crude oil, gas, and fertilizers have seen negative growth. In the transport sector, growth in the first nine months of 2014-15 has improved in railway freight (5.1 percent), domestic air passenger traffic (7.1 per cent), international passenger traffic (10.3 per cent), international cargo (8.3 per

cent), domestic cargo (19.3 per cent), and cargo throughput at major and non-major ports (6.8 per cent) as compared to the same period in the 2013-14.

The performance of listed manufacturing companies in the private sector in terms of growth of sales and net profit appeared to turn around in Q1 2014-15. However, the performance in Q2 2014-15 dampened expectations of sustained improvement. There is no discernible improvement in capacity utilization in the first two quarters of 2014-15, as per the RBI's twenty-seventh round of the Order Books, Inventories, and Capacity Utilization Survey.

All the other major industrial sectors except mining have witnessed slowdown in the growth of credit in 2014-15 as compared to 2013-14. The growth of credit flow to the manufacturing sector at 13.3 per cent in 2014-15 is lower than the growth of 25.4 per cent in 2013-14. Chemicals, food processing, and textiles have seen a sharp decline in growth of credit in 2014-15. Services, construction, telecommunications, computer software and hardware, drugs and pharmaceuticals, automobile industry, chemicals, and power have attracted a disproportionately high share of total inflows.

SERVICES SECTOR

India's services sector remains the major driver of economic growth contributing 72.4 per cent of GDP growth in 2014-15. Services-sector growth has increased from 8.0 per cent in 2012-13 to 9.1 per cent in 2013-14 and further to 10.6 per cent in 2014 -15. Growth in trade, hotels, transport, communication, and related services was 8.4 per cent in 2014-15 compared to 11.1 per cent in 2013-14. Data available for the beginning months of 2015 indicates pick-up in the services sector with expansion in business activity as indicated by services PMI data. This growth momentum is expected to continue in 2015-16. The services value-added content in exports has also been rising. India is very active in the services negotiations in the World Trade Organization (WTO) and has recently provided more liberal offers to least developed countries.

BANKING AND INSURANCE

Asset quality of banks showed some signs of stress during the year. The gross non-performing advances (NPAs) of scheduled commercial banks (SCB) as a percentage of the total gross advances increased to 4.5 per cent in September 2014 from 4.1 per cent in March 2014. The growth of aggregate deposits of Scheduled Commercial Banks decelerated during 2014-15 till December mainly due to base effect, i.e. high accretion to Non Resident Indian deposits last year during September-November and lower deposit mobilization during this year. The growth in non-food credit also decelerated. To achieve the objective of financial inclusion, the Pradhan Mantri Jan-Dhan Yojana (PMJDY) was launched on 28 August 2014. The Yojana envisages universal access to banking facilities with at least one basic banking account for every household. The scheme is expected to provide a big push to the Direct Transfer Benefit scheme. The year 2014-15 saw other reform initiatives in the banking and insurance sector, which Include allowing banks to raise capital from the market to meet capital adequacy norms by diluting the government's stake up to 52 per cent and notifying of an ordinance to enhance the foreign equity cap in the insurance sector. Equity markets continued to do well during the year. The benchmark indices BSE Sensex and Nifty showed a general upward trend in the current year. A number of steps such as improvement in corporate governance norms and establishment of foreign portfolio investor (FPI) regulation framework were taken by the Securities and Exchange Board of India (SEBI) to improve functioning of both primary and secondary markets.

TOWARDS A HEALTHY INDIA:

The Swachh Bharat Mission (Gramin) launched in October 2014, aims at attaining an Open Defecation Free India by 2 October 2019. Besides, Mission Indradhanush launched in December 2014 will cover all children by 2020 who are either

unvaccinated or are partially vaccinated against seven vaccine-preventable diseases.

POLITICAL SYSTEM

India is the largest democracy in the world. India is a Sovereign Democratic Republic and has adopted the Parliamentary system of democracy with a federal structure. The Parliament comprises of two Houses – the Lower House (Lok Sabha) and the Upper House (Rajya Sabha). The members of the Lok Sabha are elected by the citizens directly through general elections. The members of the Rajya Sabha are elected by the members of the Lok Sabha, members of State Legislature and electorate of graduate and teacher's constituencies. The party with the majority in the Lok Sabha forms the government. The tenure of the government is five years.

There are 29 states and 7 union territories. The States are governed by independently elected State Governments, formed by the political party in majority in the State Legislature.

THE JUDICIARY

India has an independent judicial system with its concepts and procedures resembling those of Anglo-Saxon countries. The Supreme Court is the apex judicial authority in India. It is followed by the High Courts, which head the state judicial system.

The states are further divided into judicial districts, which are presided over by the district and sessions' judges, who are the highest judicial authority in a district. Further down are the courts of civil jurisdiction, wherein the heads are known in different states as munsifs, sub-judges and civil judges. Similarly, criminal judiciary comprises the chief judicial magistrate and judicial magistrates of first and second class.

ESTABLISHING A BUSINESS PRESENCE-RELEVANT EXCHANGE CONTROL REGULATIONS

GENERAL

In order to ascertain the prevailing exchange control regulations on the subject of establishing a business presence in India by a Foreign Company, one must conform to the provisions of the Foreign Exchange Management Act, 1999 and the regulations to that effect circulated from time to time by the said Act. In pursuance of the Government of India's commitment to further facilitate investment in Indian industry, Foreign Direct Investment Scheme, as provided in the said Act, has been permitted through automatic route (i.e. without obtaining any prior approval from the Government of India) for all industries except for a few specified items and situations. Accordingly, the permission of the Government, for the purpose of making Foreign Direct Investments in India, is now required only in the case of the investments that pertains to the prohibited list and for certain other specified sectors like, investments in industries which are subject to license, investments by foreign companies having a previous tie up in India, acquisition of shares of the existing Indian companies in select categories, investments over and above the sectoral caps provided under relevant part of the Regulations. Such sectoral caps are also constantly reviewed and are liberalized from time to time.

IMPORTANT DEVELOPMENTS IN INBOUND INVESTMENTS POLICIES:

A. FDI AND FII RELATED DEVELOPMENTS:

CONSOLIDATED FDI POLICY

The Department of Industrial Policy and Promotion from the Ministry of Commerce and Industry has released the sixth edition of Consolidated FDI Policy which became effective from May 12, 2015

The key changes that have been introduced by the Consolidated FDI Policy 2015 are as follows:

- **Allowance of optionality clause:** The FDI Policy has been amended to give effect to Reserve Bank of India's (RBI's) circular dated 15 July 2014 that allowed Indian Companies to issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares with optionality clause, subject to conditions as specified in the Circular.

- **Depository Receipt Scheme (DR Scheme):** The FDI Policy incorporates provisions of the Depository Receipt Scheme, 2014 (DR Scheme) issued by the Ministry of Finance vide notification dated 21 October 2014[1]. A person can issue DRs, if it is eligible to issue eligible instruments under Schedule 1, 2, 2A, 3, 5 and 8 of FEMA 20/2000. Similarly, form for filing return with the RBI, by the Domestic Custodian who has arranged issue/transfer of Depository receipts, has been revised in accordance with the DR Scheme 2014. Accordingly, Form DRR has been introduced as against the existing Form DR, and has to be filed within 30 days of close of the issue/programme.

- **Transfer of shares and convertible debentures:** It has been clarified that:

    - In sectors under the **automatic** route, government approval is **not required** for a Non-Resident (NR) to NR transfer of shares in investee company;

[1] F. No. 9/1/2013-ECB

- In sector under **approval** route, government approval is **required** for NR to NR transfer of shares in investee company; and

- In case a NR investor (including Non-Resident Indian) acquires shares on a stock exchange under the FDI Scheme, the onus of filing Form FC-TRS is placed on the investee company.

- **Issue of shares against any other funds:** It has been clarified that issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or RBI under Foreign Exchange Management Act, 1999 or any rules/regulations framed or directions issued there under is permitted subject to certain conditions.

- **Acquisition of shares under Scheme of Merger/Demerger/Amalgamation:** It has been clarified that Foreign Investment Promotion Board (FIPB) approval shall not be required for mergers and acquisitions taking place in sectors under automatic route.

- **Reporting of partly paid up shares**: Investee Company issuing partly paid equity shares has to furnish a report not later than 30 days from the date of receipt of each call payment and file a report in Form FC-GPR to the extent they become paid up.

  In case of gift of partly paid shares/warrants, the transferor resident in India also needs to submit, along with other documentation requirements, a declaration from the donee accepting partly paid shares/warrants that it is aware of the liability against pending calls and consequences of arrears thereof.

- **Amendment in Annual Return on Foreign Liabilities and Assets**: Annual reporting requirements, i.e. filing of return on Foreign Liabilities and Assets has undergone changes to encapsulate detailed disclosure of transactions with affiliates outside India where more than 50 per cent of equity participation is by the Indian reporting company.

  Details pertaining to sales, purchases, imports and exports of current and previous year need to be accordingly reported.

- **Authority to grant approvals for cases under government route:** The amended provisions are as under:

  Proposals involving total foreign equity inflow **of and below INR 2,000 crore** would be considered by the FIPB; and

  Proposals involving total foreign equity inflow **beyond INR 2,000 crore** would be considered by the **Cabinet Committee on Economic Affairs.**

- In addition to the above, the Circular continues to mention that warrants/ partly paid shares can be issued to person/(s) resident outside India only after obtaining approval under the government route.

  However, as per A.P. (DIR Series) Circular No. 3 dated 14 July 2014, partly paid shares/ warrants are recognised as eligible instruments for the purpose of FDI and FPI, subject to compliance with respective schemes. Further, the RBI circular also mentioned that an Indian company whose activity/sector falls under the government route would require a prior approval from the FIPB for issuance of warrants/partly paid shares which implies that an Indian company whose activity/sector falls under the automatic route is permitted to issue warrants/partly paid shares without an approval from the FIPB.

B. RELATED TO EXTERNAL COMMERCIAL BORROWINGS:

- **External Commercial Borrowings (ECB)– Liberalization And Simplification**

Reserve Bank of India (RBI) has issued a series of circulars for liberalization / rationalization / simplification of the existing ECB guidelines. Policy amendments as introduced by the RBI are as under :

- **External Commercial Borrowings (ECB) denominated in Indian Rupees (INR) – Mobilisation of INR[2]**

  Non-resident ECB lenders may extend loans in Indian Rupees subject to, inter alia, the lender mobilising Indian Rupees through a swap undertaken with an AD Cat-I bank in India. To facilitate ECB lending denominated in INR by overseas lenders, it has now been decided that such lenders may enter into swap transactions with their overseas bank which shall, in turn, enter into a back-to-back swap transaction with any AD Cat-I bank in India as prescribed.

- **External Commercial Borrowings (ECB) Policy – Simplification of Procedure[3]**

  As a measure of simplification of the existing procedure for rescheduling / restructuring of ECBs and in supersession of aforesaid provisions, it has been decided to delegate powers to the designated AD Category-I banks to allow:

  i. Changes / modifications (irrespective of the number of occasions) in the draw-down and repayment schedules of the ECB whether associated with change in the average maturity period or not and / or with changes (increase/decrease) in the all-in-cost.

  ii. Reduction in the amount of ECB (irrespective of the number of occasions) along with any changes in draw-down and repayment schedules, average maturity period and all-in-cost.

  iii. Increase in all-in-cost of ECB, irrespective of the number of occasions.

  This measure is subject to the designated AD Category-I bank ensuring the following:

  i. Revised average maturity period and / or all-in-cost is / are in conformity with the applicable ceilings / guidelines; and

  ii. The changes are effected during the tenure of the ECB.

  The modification to the ECB policy will come into force with immediate effect from 23rd January 2015. All other aspects of the ECB policy shall remain unchanged.

[2] A.P. (DIR Series) Circular No.103 Dated 21 May 2015

[3] A.P. (DIR Series) Circular No.64 Dated 23 January 2015

Types of business presence

To commence its business in India, a Foreign Investor can structure its entry by evaluating any of the following options.

- *By making Investments in Newly set-up Indian Company or*
- *By making fresh investments in existing Indian Company*

The present regulations and or policies promulgated by the Government of India, permits Foreign Investment in newly set-up or in existing Indian companies under the following scenarios:

Under Automatic Route

On fulfilling the specified conditions, equity investment into an Indian Company by a Foreign Company would be permitted for the specified activities and at the limits specified below.

By Purchase or transfer of shares from or by existing share holders of any Indian Company

The Government has decided to dispense with the requirement of obtaining prior approval of the Government (FIPB) in respect of transfer of shares / convertible debentures of an Indian company, by way of sale, from residents to non-residents in sectors other than financial service sector, subject to the sectoral cap.

Annexure A and B to the regulations providing FDI scheme is reproduced below for ready reference. The said Annexure A provides list of activities for which automatic route of RBI for investment by person resident outside India is not available.

Additionally, Annexure A also provides list of activities where FDI is prohibited. Whereas Annexure B provides list of activities / sector along with eligible FDI limit.

Annexure A (Sectors/Activities prohibited/restricted under FDI Policy)

(A) List of Activities for which Automatic Route of RBI for investment from person resident outside India is not available

1. Petroleum Refining (except for private sector oil refining), Natural Gas / LNG Pipelines
2. Defense and Strategic Industries
3. Atomic Minerals
4. Print Media
5. Broadcasting
6. Postal services
7. Establishment and Operation of satellite
8. Tea Sector
9. Asset Reconstruction Companies

List of activities or items for which FDI is prohibited:

1. Lottery Business including Government /private lottery, online lotteries, etc.
2. Gambling and Betting including casinos etc.
3. Chit funds
4. Nidhi company
5. Trading in Transferable Development Rights (TDRs)

6. Real Estate Business or Construction of Farm Houses
7. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
8. Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

Annexure B

Sectoral Cap on Investments by Persons Resident outside India
(As updated in accordance with Consolidated FDI policy Dated 12.05.2015, effective from 12.05.2015)

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
1	Private Sector Banking	74%	Automatic route- up to 49%. Government route- beyond 49% and up to 74%
2	Public Sector Banking	20%	FDI and portfolio investment allowed under the approval route
3	Non-Banking Financial Companies	100%	FDI /NRI investments allowed in the following 18 NBFC activities shall be as per the levels indicated below: a) Activities covered 1 Merchant Banking 2 Under writing 3 Portfolio Management Services 4 Investment Advisory Services 5 Financial Consultancy 6 Stock-broking 7 Asset Management 8 Venture Capital 9 Custodial Services 10 Factoring 11 Credit Rating Agencies 12 Leasing & Finance 13 Housing Finance 14 Forex-broking 15 Credit Card Business 16 Money-changing Business 17 Micro-credit 18 Rural credit b) Minimum Capitalization norms for fund based NBFCs i) for FDI upto 51%, US $ 0.5 million to be brought in upfront

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
			ii) If the FDI is above 51 % and upto 75 %, US $ 5 million to be brought upfront iii) If the FDI is above 75 % and upto 100 %, US $ 50 million out of which $ 7.5 million to be brought in upfront and the balance in 24 months c) Minimum Capitalization norms for non-fund based activities Minimum Capitalization norm of US$0.5 million is applicable in respect of non-fund based NBFCs with foreign investment d) Foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US $ 50 million as at b) (iii) above (without any restriction on number of operating subsidiaries without bringing in additional capital) e) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries also complying with the applicable minimum capital inflow i.e., (b) (i) and (b) (ii) above f) FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the Reserve Bank of India. RBI would issue appropriate guidelines in this regard
3	Insurance	26%	FDI upto 26% in the Insurance sector is allowed on the automatic route subject to obtaining license from Insurance Regulatory & Development Authority (IRDA)
	Courier Services	100%	
	Defence	49%	FDI permitted under

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
			approval route excluding distribution of letters FDI, including NRI investments, in this sector, is permitted up to 49% should be an Indian company owned and controlled by resident Indian citizens. According to guidelines for the production of arms and ammunition, the management of the applicant company or partnership should be in Indian hands, and the majority of the board as well as the chief executive should be resident Indians.
	Micro and small enterprises (MSE)	24%	FDI is permitted in an MSE for the manufacture of items reserved under the small-scale sector, subject to compliance with the appropriate sectoral policy. However, any industrial undertaking, with or without FDI, which is not an MSE and is engaged in manufacturing items reserved for the MSE sector (presently 20 items), will require FIPB approval where foreign investment is more than 24%.
4	Telecommunications	100%	FDI up to 100% with 49% on the automatic route and beyond 49% on the government route subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, except "Other Service Providers", which are allowed 100% FDI on the automatic route.
5 i)	Petroleum Refining (Private Sector)	100%	FDI permitted upto 100 % in case of private Indian companies. • Investment limit has been raised from 26 to 49% in petroleum refining by PSUs.
ii)	Petroleum Product	100%	Subject to the existing sectoral

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
	Marketing		policy and regulatory framework in the oil-marketing sector
iii)	Oil Exploration in both small and medium sized fields	100%	Subject to and under the policy of Government on private participation in - a) exploration of oil and b) the discovered fields of national oil companies.
iv)	Petroleum Refining	49%	FDI permitted upto 49 % under Automatic Route
6	Housing and Real Estate	100%	Minimum area to be developed under each project would be as under: a) In case of development of serviced plots, no minimum land area requirement. b) In case of construction-development projects, a minimum floor area of 20,000 sq. meter. c) Investee company will be required to bring minimum FDI of US$ 5 million within six months of commencement of the project. The commencement of the project will be the date of approval of the building plan/lay out plan by the relevant statutory authority. Subsequent tranches of FDI can be brought till the period of ten years from the commencement of the project or before the completion of project, whichever expires earlier. d) The conditions mentioned above, will also not apply to investee/joint venture companies which commit at least 30 percent of the total project cost for low cost affordable housing.
7	Coal and Lignite	100%	i) Private Indian companies setting up or operating power projects as well as coal and lignite mines for captive consumption are allowed FDI upto 100%

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
			ii) 100% FDI is allowed for setting up coal processing plants subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing
8	Venture Capital Fund (VCF) and Venture Capital Company (VCC)		Offshore Venture Capital Funds/Companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI
9	Trading	100%	FDI is permitted upto 100% through Automatic Route
10	Power	49%	FDI allowed upto 49 % in respect of projects relating to electricity generation, transmission and distribution, other than atomic reactor power plants. There is no limit on the project cost and quantum of foreign direct investment.
11	Drugs & Pharmaceuticals	100%	FDI permitted upto 100% for manufacture of drugs and pharmaceuticals provided the activity does not attract compulsory licensing or involve use of recombinant DNA technology and specific cell/tissue targeted formulations. FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced by recombinant DNA technology and specific cell/tissue targeted formulations will require prior Govt. approval.
12	Road and highways,	100%	In projects for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbors.

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
13	Hotel & Tourism	100%	The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/or catering and food facilities to tourists. Tourism related industry include travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment amusement, sports and health units for tourists and Convention/Seminar units and organizations. For foreign technology agreements, automatic approval is granted if i) Up to 3% o the capital cost of the project is proposed to be paid for technical and consultancy ii) Up to 3% o the net turnover is payable for franchising and marketing/publicity support fee, and Up to 10% of gross operating profit is payable for management fee, including incentive fee.
14	Mining	100%	i) For exploration and mining of diamonds and precious stones FDI is allowed up to 100% under automatic route. ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing FDI is allowed upto 100% under automatic route iii) Press Note 18 (1998 series) dated 14/12/98 would not be applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and/or the particular mineral.

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
15	Advertising	100%	Advertising sector - FDI upto 100% allowed on the automatic route
16	Films	100%	Film Sector (Film production, exhibition and distribution including related services/products) FDI upto 100% allowed on the automatic route with no entry-level condition
17	Airports	100%	Automatic up to 74% Government route beyond 74%
18	Mass Rapid Transport Systems	100%	FDI upto 100% is permitted on the automatic route in mass rapid transport system in all metros including associated real estate development
19	Pollution Control & Management	100%	In both manufacture of pollution control equipment and consultancy for integration of pollution control systems is permitted on the automatic route
20	Special Economic Zones	100%	All manufacturing activities except: i) Arms and ammunition , Explosives and allied items of defense equipments, Defense aircrafts and warships ii) Atomic substances, Narcotics and Psychotropic Substances iii) Distillation and brewing of Alcoholic drinks and iv) Cigarette/cigars and manufactured tobacco substitutes.
21	Any other Sector/Activity	100%	if not included in Annexure A
22	Air Transport Services (Domestic Airlines)	100% for NRIs 49% for others	No direct or indirect equity participation by foreign airlines is allowed
23	Townships, housing, built-up infrastructure and construction development projects	100%	The investment shall be subject to the following guidelines: a) Minimum area to be developed under each project shall be as under:

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
	The sector would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals educational institutions, recreational facilities, city and regional level infrastructure		i In case of development of services housing plots - 10 hectares ii In case of construction - development project - 50,000 sq. mtrs iii In case of combination project, any one of the above two conditions.
			b) The investment shall be subject to the following conditions: i) Minimum capitalization of US $ 10 Million for wholly owned subsidiaries and US $ 10 Million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company. ii) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exist earlier with prior approval of the Government through the FIPB. c) At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor shall not be permitted to sell undeveloped plots. d) The project shall conform to the norms and standards, as laid down in the applicable building control regulations,

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
			bye-laws, rules, and other regulations of the State Government / Municipal / Local Body concerned. e) The investor shall be responsible for obtaining all necessary approvals, including those of the building / layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws / regulations of the State Government / Municipal / Local Body concerned. f) The State Government / Municipal / Local Body concerned, which approves the building / development plans, shall monitor compliance of the above conditions by the developer. **Note:** For the purpose of these guidelines, 'undeveloped plots' will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains service agency before he would be allowed to dispose of serviced housing plots.
24.	Credit Information Companies	74% (FDI + FII)	• FDI of up to 74% shall be allowed • Credit Reference Agencies are scrapped from the list of NBFC activities, where FDI is permitted. • Investment by SEBI Registered FIIs is permitted only through purchases in the secondary market to an extent of 24 per cent. • Investment by SEBI Registered FIIs to an extent of 24 per cent should be within the overall

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
			limit of 49 per cent for Foreign Investment. • No FII can individually hold directly or indirectly more than 10 per cent of the equity.
25.	Commodity Exchanges	49 %	• Foreign investment of up to 49% in aggregate (26% for FDI & 23% for FIIs) shall be allowed. • The above investment shall be subject to a ceiling limit of up to 5% for every investor. • FDI is allowed with specific approval of the Government. • The FII purchases in equity of Commodity Exchanges are restricted to the secondary markets only. • Foreign Investment in Commodity Exchanges is also subject to compliance with the regulations issued, in this regard, by the Forward Market Commission.
26.	Industrial Park	100 %	• FDI up to 100% would be allowed both in setting up and in established industrial parks, subject to the fulfillment of the following conditions. a. The Industrial Park comprises of at least 10 units and no single unit shall occupy more than 50% of the allocable area b. The minimum percentage of the area for industrial activity shall at least 66% of the total allocable area.
27.	Civil Aviation Sector	100 %	• Relaxation of FDI cap in aviation sector, by allowing 100% FDI in helicopter/seaplane services, flying & technical training institutions, repairs & maintenance department. • Participation in equity, either directly or indirectly, of air transport undertaking engaged in operating Scheduled, Non-Scheduled, and Chartered airlines shall not be open to FDI. • Up to 74% investment in Non-scheduled airlines, chartered & cargo airlines.

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
28.	Broadcasting	Upto 49% under automatic route Beyond 49 % & upto 74% under Govt. approval route	• Teleports (setting up up-linking HUBs); • Direct to Home; • Cable Network (Multi-System Operators operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); • Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations upto 26% through Government approval
29.	Mining of Titanium Bearing Minerals & Ores	100%	• No FDI shall be permitted in atomic minerals. • Up to 100%, with the prior approval of the government
30.	Agriculture and allied activities	100%	• FDI or NRI investment is not permitted in agriculture and allied activities, except under the following activities: • FDI up to 100% on the automatic route is permitted in floriculture, horticulture, development of seeds, animal husbandry, pisciculture, aquaculture, cultivation of vegetables and mushrooms under controlled conditions and services related to agro and allied sectors. Certain conditions apply for companies dealing with development of transgenic seeds and vegetables • In the tea sector (including tea plantations), FDI up to 100% is allowed with the prior approval of the FIPB. Prior approval of the state Government is required for any change in land use
33.	Print Media	26%	• Publishing of Newspaper and periodicals dealing with news and current affairs • Publication of Indian editions of foreign magazines dealing with news and current affairs

Sr. No.	Sector	Investment Cap	Description of Activity/Items/Conditions
			• Publishing/printing of Scientific and Technical Magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.

Amendments as per Consolidated FDI Policy Effective from May 12,2015

The applicable cap/ restriction on Foreign Direct Investment (F.D.I.) in few key identifiable sectors were proposed to be further liberalized.

Sector	Liberalization
Railway Infrastructure and Manufacturing of Medical Device	Newly opened to receive FDI up-to 100 percent under automatic route.
Defence	Increased from 26 percent to 49 percent through government approval route and above 49 percent under the approval of Cabinet Committee on Security (CCS)
Insurance	Increased from 26 percent to 49 percent through government approval route.

Non-Automatic Route

All investment proposals that fall outside existing guidelines, as explained in the above table, are to be cleared by the office of the Foreign Investment Promotion Board (FIPB), Delhi.

ENTRY OPTIONS

A foreign company looking to set up operations in India can consider the following options:

Operating as a Foreign company

- By Establishing a Liaison Office
  A person resident outside can establish a liaison office in India to undertake the permissible activities like representing the parent/group companies in India, carrying out liaison activities, promoting export import from or to India, etc. In order to carry out any other activity than those mentioned will have to seek RBI approval.
  The Foreign Company would be required to file a specified form with the concerned office of the Reserve Bank of India.

- By Setting-Up a Project Office
  To execute contracts in India, the Foreign Company is permitted to establish a project office. However, the role of such offices shall be limited only for the purpose of executing the contract.

- By Establishing a Branch
  A person resident outside can establish a branch office in India shall apply to the Reserve Bank in the prescribed form. A branch office may be permitted to carry on activities linked to export/import, carrying out research work, rendering professional services, etc. Any activity outside the purview of such activities would require RBI permission.

- Operating as an Indian company

  - Wholly-owned subsidiary company
    A foreign company can set up a wholly owned subsidiary company in India to carry out its activities. Such a subsidiary is treated as an Indian resident and an Indian company for all Indian regulations (including income tax, Foreign Exchange Management Act,1999 and the Companies Act), despite being 100% foreign-owned. At least two members, for a private limited company, and seven members, for a public limited company, are mandatory.
    Activities of such a company will need to comply with the provisions of the FDI policy.

    Joint venture with an Indian partner (equity participation)
    Although a wholly owned subsidiary has proved to be the preferred option, foreign companies have also begun operations in India by forming strategic alliances with Indian partners. The trend is to choose a partner in the same area of activity or who brings synergy to the foreign investor's plans for India. Sometimes joint ventures are also necessitated due to restrictions on foreign ownership in certain sectors.
    The foreign investment guidelines for investment in an Indian company have already been discussed above. The operational guidelines with respect to compliances to be undertaken with respect to FDI in an LLP are likely to be notified soon by the RBI.

  - Limited liability partnership (LLP)
    LLP is a new form of business structure in India. It combines the advantages of a company, such as being a separate legal entity having perpetual succession, with the benefits of organisational flexibility associated with a partnership. At least two partners are required to form an LLP and they have limited liability.
    An LLP is comparatively easier to manage with less compliance levels as compared to a company form of organisation. Further, an LLP is not subject to mandatory requirements applicable to a company with regard to provision of depreciation and transfer to reserves prior to distribution of profits. As mentioned earlier, the FDI policy for LLPs has been notified making this a possible viable entity form for Indian business operations of foreign investors.

A. Guidelines for calculation of total foreign direct and indirect investment in Indian Companies

- Total Foreign Investment i.e. Direct and Indirect Foreign Investment in Indian Companies

  - Investment in Indian companies can be made both by non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect

investment can also be a cascading investment i.e. through multi-layered structure.

- For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all types of foreign investments i.e. FDI; investment by FIIs (holding as on March 31); FPIs (holding as on March 31); QFIs (holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

- Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in an Indian company

  - Counting of direct foreign investment

    All investment directly by a non-resident entity into the Indian company would be counted towards foreign investment.

  - Counting of indirect foreign investment

    The foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned and controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens .

    For cases where condition (a) above is not satisfied or if the investing company is owned or controlled by 'non-resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment, provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

- The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or rule there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the

Insurance Sector which will continue to be governed by the relevant Regulation.

- Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009 (date of issue of Press Note 2 of 2009) would not require any modification to conform to these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

SECURITIES EXCHANGE BOARD OF INDIA

The Companies (Amendment) Act, 2000 has made Securities Exchange Board of India (SEBI) as the administrative authority with respect of listed companies. In case of unlisted companies, the administrative authority continues to be the Ministry of Company Affairs. Thus, for violations of the sections in the Companies Act, complaints should be made to SEBI who is now vested with powers to inquire into such complaints and punish those who are found guilty. SEBI has notified various guidelines, notification from time to time for Corporates engaging in various transactions concerning their management. The prominent among them are Securities Exchange Board of India (Buy-back of securities) Amendment Regulations, 2004, listing agreement, SEBI Disclosure and Investors Protection Guidelines, The Securities and Exchange Board of India (SEBI) (Substantial Acquisition of Shares and Takeovers) Guidelines, 1997 (the Takeover Code) etc.

Recent developments

Few recent developments are enumerated below:

- Clarification on grant of registration as a Foreign Portfolio Investor (FPI) to Registered Foreign Venture Capital Investors (FVCI).[4]
    - The SEBI (Foreign Portfolio Investors) Regulations, 2014 ("FPI Regulations") as well as the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations") do not expressly prohibit FVCI from holding registration as a FPI. The investment conditions and restrictions for an entity registered as FVCI under FVCI Regulations are different as compared to the investment conditions and restrictions as prescribed for an entity registered as FPI under the FPI Regulations. Thus, such an entity would be required to have a clear segregation of funds/ securities which are proposed to be invested / held under the respective registrations.
    - Accordingly, it is clarified that a DDP may consider an applicant, holding FVCI registration, for grant of registration as an FPI subject to the following:
        - The applicant complies with the eligibility criteria as prescribed under the FPI Regulations.
        - The funds raised, allocated and invested must be clearly segregated for both the registrations.
        - Separate accounts must be maintained with the custodian for execution of trades. However, such an applicant shall have same custodian for its activities as FPI and FVCI.
        - The securities held under FVCI and FPI registrations should be clearly segregated.
    - Reporting of transactions must be done separately according to the conditions applicable under the specific registration.

[4] CIR/IMD/FIIC/05/2015 Dated 12 June 2015

- All the conditions applicable to the entity under the respective registrations must be complied with at the level of the segregated funds and activities with respect to the specific registrations.
- The investment restrictions as applicable to FPI, in terms of Regulation 21 of FPI Regulations and SEBI Circular No. CIR/IMD/FIIC/20/2014 dated November 24, 2014 shall be applicable.
- The applicant does not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1) (f) of FPI Regulations.
- The applicant shall be required to comply with the provisions of FPI Regulations, FVCI Regulations and the circulars etc., issued there under from time to time.

THE COMPETITION COMMISSION OF INDIA (CCI)

The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded his assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007.

In accordance with the provisions of the Amendment Act, the Competition Commission of India and the Competition Appellate Tribunal have been established. The Competition Commission of India is now fully functional with a Chairperson and six members. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009.

The Central Government has established the Competition Commission of India (CCI) with head office in New Delhi to carry out the intent and purposes of the Act. The CCI is mandated to prohibit anticompetitive agreements, abuse of dominance (Sec. 3 & 4) and to regulate certain combinations (Sec. 5 & 6) through a process of 'Enquiry'. An Enquiry under section 3 &4 may be instituted by the CCI upon its own information or knowledge or on receipt of a complaint from any person or consumer or consumer association or trade association or a reference made to it by the Central Government or a State Government or a statutory authority. Such an 'Enquiry' has to be preceded by investigation by the Director General. The Commission is also mandated to give its 'opinion' on a competition issue within 60days from the date of receipt of a reference under Section 21 from the Statutory Authority or under Section 49 from the Central Government. Recognizing the need for and usefulness of building strong competition culture, a responsibility also devolves on the Commission to take suitable measures for promoting competition advocacy, creating awareness and to impart training about competition issues.

Industry's reservation to the competition law relate mostly to the provisions for mergers and acquisitions. The Competition (Amendment) Act 2007 has enabled the government to provide the necessary structure to the Competition Commission and Competition Appellate Tribunal (CAT). As per the Competition (Amendment) Act 2007, for the first time, "Combination" (i.e. mergers, acquisitions & amalgamation), including foreign to foreign transactions, will have to be notified to the Competition Commission of India (CCI) for scrutiny & clearance. Failure to notify can result in penalty of upto1 per cent of turnover or assets. Further certain combinations must be notified to the CCI within 30 days of signing an agreement, pending clearance of which the parties cannot close the deal. At present, 107 countries have enacted a competition law. The implementation of the competition regulations has boosted India's economic growth momentum.

RECENT AMENDMENTS[5]

The Central Government, in public interest, hereby exempts the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of Section 3 of the said Act, for a period of one year from the date of publication of this notification in the Official Gazette, in respect of carriers of all nationalities operating ships of any nationality from any Indian port provided such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of markets or customers.

During the said period of one year, the Director General, Shipping, Ministry of Shipping, Government of India shall monitor such agreements and for which, the persons responsible for operations of such ships in India shall file copies of existing Vessels Sharing Agreements or Vessels Sharing Agreements to be entered into with

[55] Ministry of Corporate Affairs Notification Dated 5th February 2015 No 268

applicability during the said period along with other relevant documents within thirty days of the publication of this notification in the Official Gazette or within ten days of signing of such agreements, whichever is later, with the Director General, Shipping.

THE COMPANIES ACT, 2013: AN OVERVIEW

The Companies Act, 2013 ("2013 Act") was enacted on 29 August 2013 on accord of Hon'ble President's assent and has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle blowers. The 2013 Act replaces the nearly 60-year old Companies Act, 1956 ("1956 Act"). The 2013 Act provides an opportunity to make our corporate regulations more contemporary and also potentially to make our corporate regulatory framework a model to emulate for other economics with similar characteristics. The 2013 Act is more a rule-based legislation containing only 470 sections, which means that the substantial part of the legislation will be in the form of rules.

The 2013 Act was set to be implemented in a phased manner, moving in this direction, on 12 September 2013, the Ministry of Corporate Affairs (MCA) notified 98 sections with immediate effect. On 27 February 2014, MCA notified rules relating corporate social responsibility activities to become effective from 01 April 2014. On 26 March 2014, MCA notified another 183 sections and schedules to the 2013 Act to become effective from 01 April 2014. As a result, many of the key requirements of the new 2013 Act including those relating to incorporation, management, board functioning, accounts and audit, become effective from 01 April 2014.

In a yet another big step forward, the MCA on 26 March notified 183 sections more of the Companies Act 2013 in addition to six schedules to the Companies Act 2013. This follows the notification of 98 sections in September 2013. This is an exciting development that makes the reformative new company law indeed a reality however considering the immediate effective date (01 April 2014) timelines to ensure compliance is expected to be of concern for the corporate.

The key sections out of the 183 sections that have been notified in addition to schedules and which may be expected to have significant impact to the functioning of the companies are as follows:

CHAPTER I- PRELIMINARY/ DEFINITIONS

Section 2(41)-Financial Year

The 1956 Act provides companies to elect financial year. The 2013 Act eliminates the existing flexibility in having a financial year different than 31 March. The 2013 Act provides that the financial year for all companies should end on 31 March, with certain exceptions approved by the National Company Law Tribunal. Companies should align the financial year to 31 March within two years from 01 April 2014.

Section 2(85)-Small Company

Small Company means a company (other than a public company) whose paid –up capital does not exceed Rs 5 million (or such other higher amount as may be prescribed, not exceeding Rs 50 million) or whose turnover does not exceed Rs 20 million (or such other higher amount as may be prescribed, not exceeding Rs 200 million) as per last the statement of profit and loss. Small Company cannot be a holding or a subsidiary company.

The 2013 Act provides exemptions to Small Companies primarily from certain requirements relating to board meeting, presentation of cash flow statement and certain merger process.

CHAPTER IV-SHARE CAPITAL AND DEBENTURE

Section 52-Application of premium received on shares

Section 52 deals with utilisation of securities premium. While the 1956 Act does not distinguish the manner of utilisation of securities premium, section 52 restricts utilisation of securities premium for certain class of companies (as may be prescribed) and companies that comply with accounting standards prescribed under section 133 of the 2013 Act.

55(except for sub-section 5)-Issue and redemption of Preference Shares

Notified part of section 55 deals with issue and redemption of preference shares. It does not change the 1956 Act requirements except that company may issue preference shares with a redemption period exceeding 20 years for specified infrastructure projects. Infrastructure projects are notified vide Schedule VI to the 2013 Act.

CHAPTER V- ACCEPTANCE OF DEPOSIT BY COMPANIES

Section 73, 74(1) and 76- Provisions related to acceptance of deposits

The 2013 Act provides more stringent requirements to enable the company to accept deposits from public. Section 74 (1) requires companies to repay the deposits (including interest thereon) accepted under the 1956 Act within one year from the commencement of this section.

CHAPTER VII-MANAGEMENT AND ADMINISTRATION

Section 108- Voting through electronic means

Section 108 permits shareholder voting by electronic means for prescribed class of companies.

CHAPTER IX-ACCOUNT OF COMPANIES

Section 129- Financial Statement

The 2013 Act mandates preparation of consolidated financial statements for all companies which have one or more subsidiaries in addition to the standalone financial statements.

Section 134- Financial statement, Board's report, etc.

Section 134 seeks to make the board's report more informative with extensive additional disclosures like a statement on declaration of independence by the independent directors, related party transactions, policy on director's appointment and remuneration, ratio of remuneration to each director to the median employee's remuneration, policy developed and implemented by the company on corporate social responsibility.

Further, Director's responsibility statement should include the following additional matters as compared to the 1956 Act:

(i) In case of a listed company, the directors had laid down internal financial controls to be followed by the company and they are adequate and operating effectively; and

(ii) The directors have devised proper systems to ensure compliance with all applicable laws and such systems are adequate and operating effectively.

Section 138- Internal audit

Section 138 mandates internal audit for prescribed class of companies (*rules have prescribed the applicability of this section to listed company; unlisted public company with a paid up capital of Rs 500 million or more, or turnover of Rs 2000 million or more, or outstanding bank/financial institution borrowings of Rs 1000 million or more, or outstanding deposits of Rs 250 million or more at any time during the last financial year; and every unlisted public company with a turnover at any time during the last financial year ; and private company with a turnover of Rs 2000 million or more, or outstanding bank/financial institution borrowings of Rs 1000 million or more, or outstanding deposits of Rs 250 million or more at any time during the last financial year)

CHAPTER X-AUDIT AND AUDITORS

Section 139- Appointment of auditors

Auditors' appointment will be for a five year term (subject to ratification by members at every annual general meeting). In case of listed companies and such class of companies as prescribed (draft rules have prescribed the applicability of this section to all companies except Small Company and One Person Company) , the term of appointment of an individual auditor/ an audit firm is restricted to a

period of five years/ten years. An auditor/ audit firm should mandatorily rotate at the expiry of the term and can get appointed only after a cooling off period of five years. Act provides for a transition period of three years, from 01 April 2014, to comply with the mandatory rotation requirement.

Section 141-Eligibility, qualifications and disqualifications of auditors

The 2013 Act provides that a firm wherein a majority of the partners practising in India are qualified for appointment may be appointed to be an auditor of a company. Where a firm, including a Limited Liability Partnership, is appointed as an auditor of the company, only partners, who are chartered accountants are permitted to act and sign on behalf of the Firm. Further, the 2013 Act restricts the number of audits to 20 companies for an individual/partner and provides additional stringent disqualifications like business relationship and non-audit service disqualification.

Section 144- Auditor not to render certain services

Section 144 prohibits auditors of a company to render non-audit services to an audit client (or its holding company or its subsidiary company). Prohibited non-audit services include accounting and book keeping services, internal audit, design and implementation of any financial information system; actuarial services; investment advisory services; investment banking services; rendering of outsourced financial services and management services. Other restricted service may be further prescribed. There is a transition period of one year from 01 April 2014 to comply with this requirement.

Section 148-Central Government to specify audit of items of cost in respect of certain companies

Section 148 mandates cost audit by Cost Accountant in practice for prescribed class of companies.

CHAPTER XI-APPOINTMENT AND QUALIFICATION OF DIRECTORS

Section 149 and 164- Company to have Board of Directors and Disqualifications for appointment of director

The 2013 Act requires that the company shall have a maximum of fifteen directors and appointing more than fifteen directors will require special resolution by shareholders. Further, it requires appointment of at least one woman director on the board for prescribed class of companies.

It also requires that company should have at least one resident director i.e. who has stayed in India for a total period of not less than hundred and eighty two days in the previous calendar year.

The 2013 Act defines the term "Independent Director" and in case of listed companies, one third of the board of directors should be independent directors. There is a transition period of one year form 01 April 2014 to comply with this requirement. The 2013 Act also provides additional qualifications/ restrictions for independent directors as compared to the 1956 Act.

Section 150- Manner of selection of independent directors and maintenance of databank of independent directors

Section 150 enables selection of independent directors out of data bank maintained by a prescribed body.

Section 165- Number of directorships

Section 165 provides that a person cannot have directorships (including alternate directorships) in more than twenty companies, including ten public companies. It further provides for one year transition from 01 April 2014 to comply with this requirement.

CHAPTER XII-MEETINGS OF BOARD AND ITS POWERS

Section 177- Audit Committee

Section 177 enhances the role and responsibilities of the audit committee which includes the recommendation for appointment, remuneration and terms of appointment of auditors of the company; review and monitor the auditor's independence and performance, and effectiveness of audit process, examination of the financial statement and the auditors' report thereon; approval or any subsequent modification of transactions of the company with related parties; scrutiny of inter-corporate loans and investments; valuation of undertakings or assets of the company, wherever necessary; evaluation of internal financial controls and risk management systems; and monitoring the end use of funds raised through public offers and related matters.

Further section 177 requires every listed company or such prescribed class of companies *(*rules have prescribed the applicability of this section to listed companies and every other company which accepts deposits from the public and companies which has bank/public financial institution borrowings in excess of Rs 500 million)* to establish vigil mechanism to enable their directors and employees to report genuine concerns. The vigil mechanism will provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the Chairperson of the audit committee in appropriate exceptional cases.

Section 188- Related party transactions

Section 188 requires that related party transactions exceeding prescribed amount *(*rules have prescribed the threshold either as an absolute amount or amount determined as a percentage of turnover /net worth per last audited financial statements, threshold varies depending on the nature of related party transactions)* or all such transactions entered by prescribed class of companies *(*rules have prescribed the applicability of requirement to company having a paid up capital of Rs 100 million or more)* which are not in the ordinary course of business or not at arm's length basis should be approved by the special resolution. Related party shareholders are not permitted to exercise their voting rights in such special resolution.

It also requires every related party transaction should be referred to in the Board's report along with the justification for entering into such transactions.

CHAPTER XIII- APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

Section 203- Appointment of key managerial personnel

Section 203 mandates appointment of whole time key management personnel (Chief Executive Officer/ a whole-time director, Chief Financial Officer and Company Secretary) for prescribed class of companies *(draft rules have prescribed the applicability of this section to public companies and every other company with a paid up share capital of Rs 50 million or more).*

Section 204- Secretarial audit for bigger companies

Section 204 mandates Secretarial Audit by a Company Secretary in practice for listed companies and other prescribed classes of companies (*draft rules have prescribed the applicability of this section to every public company with a paid up share capital of Rs 1,000 million or more).*

SCHEDULES TO THE ACT 2013

Schedule II- useful lives to compute depreciation

Schedule II prescribes useful life and residual value of an asset. Certain class of companies (as may be prescribed) and companies that comply with accounting standards prescribed under section 133 of the 2013 Act should disclose the justification if the useful life and residual value of an asset are different from those prescribed under Schedule II.. Impact of change in useful life and residual life should be recognized over the revised remaining useful of the asset.

Schedule III – General instructions for preparation of balance sheet and statement of profit and loss of a company

Schedule III *(similar to existing revised schedule VI of the 1956 Act)* prescribes the format for presentation of consolidated financial statements and requires minority interest to be presented separately within equity.

*While MCA has just published the rules, these rules are to be published in the Gazette of India. More detailed analysis will be included for recently published rules in the next edition of Tracking Changes.

INCOME TAX

The incidence of Income Tax in the hands of the persons is determined in accordance with the provisions and or rules laid down under the Indian Income Tax Act, 1961. The information that is provided under this heading is applicable for the financial year to end on 31st March, 2015 (i.e. Assessment Year – 2015-2016).

TAXATION OF CORPORATES

Residential Status and taxable income

A Company that is incorporated or has its central management and control in India is treated as resident in India and is taxed on its worldwide income in India. A company incorporated outside India and having its central management and control situated outside India is treated as a non-resident company. A non-resident company is subject to tax in India to the extent of that part of its taxable income that has accrued, arisen or received in India or that part of taxable income which can be deemed to have been accrued, arisen or received in India.

Deductions

Any expense that has been incurred wholly for the business purposes can be deducted from the taxable income to the extent permissible under the Act.

Depreciation, at the rates and the manner provided in the Income Tax Act, is allowed on a block of assets, being plant and machinery, buildings, furniture and intangible assets on the declining-balance method (written down value method). In the year of acquisition, depreciation is allowed at 50 per cent of the normal rates if the asset is used for less than 180 days in that year. Value of the assets sold during the year is to be reduced from the opening balance of the block of assets. The depreciation rates provided under the Act for the various classes of assets are as follows:

Block of Assets	Rate (percent)
Building	10
Computers	60
Furniture and fittings	10
Plants and machinery	15
Ships	20
Intangible assets	25

Tax Losses

Business losses can be carried forward for eight years, on complying with certain conditions. However, unabsorbed depreciation can be carried forward beyond the period of eight years also, on complying with certain conditions. Consolidation / offset of intercompany losses is not permitted.

Tax Incentives

For the purpose of promotion and growth of industrial development, the Act offers a wide range of incentives to investors. The important concessions, amongst others, are:

- Certain percentage of profits and gains derived from specified new industrial undertakings
- Certain percentage of the profits and gains of enterprises engaged in specified infrastructure projects.

Tax incentives for certain specified activities explained:

The profits of specified new industrial undertakings and hotels qualify for tax exemption. New undertakings are defined as undertakings that are formed by means other than the division or reconstruction of a business already in existence or the transfer to a new business of machinery or plant previously used in India for another purpose. The following table sets forth the available tax exemptions.

Deductions for Industrial undertakings or enterprises engaged in infrastructure development.-

Classification of Industries	Deduction of profits derived
i) An enterprise carrying on the business of developing or maintaining and operating or developing, maintaining and operating any infrastructure facility.	100% for 10 consecutive assessment years.
ii) An undertaking providing telecommunication services whether basic or cellular including radio paging, domestic satellite service network of trunking, broadband network and internet services.	100% for first 5 years and 30% for the next 5 years.
iii) An undertaking which develops, develops and operates or maintains and operates an industrial park or Special Economic Zone notified by the Central Government.	100% for 10 consecutive assessment years.
iv) An undertaking set up in any part of India for the generation or generation and distribution of power.	100% for 10 consecutive assessment years.
v) An undertaking which starts transmission or distribution of power by laying a network of new transmission or distribution lines.	100% for 10 consecutive assessment years.
vi) An undertaking which undertakes substantial renovation and modernization of existing network of transmission or distribution lines.	100% for 10 consecutive assessment years.
vii) An undertaking owned by Indian Company formed before 30-11-2005 & notified before 31-12-2005 & set up for reconstruction or revival of a power generating plant.	100% for 10 consecutive assessment years.

The benefit of aforesaid deduction is not available to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger on or after 1st April 2007.

Undertakings in Special Category States

The deduction can be availed by an undertaking or an enterprise which newly commences the business or by an undertaking or enterprise which undertakes substantial expansion during the period indicated below:

Sr.No.	Place of Business	Deduction
1	State of Sikkim	100% of profits and gains for first 10 assessment Years.
2	State of Himachal Pradesh or the State of Uttaranchal	100% of profits and gains for first 5 assessment years and thereafter 30% for Companies and 25% Other assesses for next 5 assessment years.
3	Any of the North Eastern States	100% of profits and gains for first 10 assessment years.

SECTOR SPECIFIC PROVISIONS:

Companies engaged in Infrastructure Projects

Profits of undertakings deriving profits from developing, or maintaining and operating, or developing, maintaining and operating specified infrastructure facilities are eligible for a 100 per cent tax holiday for ten consecutive assessment years out of twenty assessment years.

Profits of undertakings, which develop, or develop and operate, or maintain and operate industrial parks notified by the Government after a specified date are eligible for a 100 per cent tax holiday for ten consecutive assessment years out of fifteen assessment years.

Any enterprise, for availing deduction with reference to the profits of the business relating to infrastructure facility, shall fulfill the following conditions:

i. The enterprise should be owned by a company registered in India or a consortium of such companies;
ii. The enterprise should enter into an agreement with Central Government or a State Government or a Local Authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining of a new infrastructure facility.
iii. Infrastructure facility' means –
   a) a road including toll road, a bridge or a rail system;
   b) a highway project including housing or other activities being an integral part of the highway project;
   c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
   d) a port, airport, inland waterway or inland porter navigational channel in the sea.

The deduction can be claimed, at the option of the assessee, for any 10 consecutive assessment years out of 15 years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication services or develops an industrial park or develops special economic zone or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernization of existing network of transmission or distribution lines. In respect of a highway project including housing or other activities being an integral part of the highway project, road including toll road, a bridge or a rail system, and a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system, assessee can claim deduction for any 10 consecutive assessment years out of 20 years beginning from the year of operation. This deduction will not be available to persons who merely execute works contract for undertakings or enterprises eligible for the deduction.

The benefit of deduction is not available to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger on or after 1st April, 2007.

Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings (subject to notes below):

Classification of Industries	Deduction of profits derived
i) Industrial undertaking located in industrially backward district notified by the Central Government.	100% for 5 yrs. & 25% (30% in case of a company) for next 5 yrs.
- Category A (as specified in the Income Tax Act)	100% for 3 years and 25% (30% in case of companies) for next 5
- Category B (as specified in the Income Tax Act)	

Classification of Industries	Deduction of profits derived
	years.
ii) Any company engaged in scientific and industrial research and development approved by the prescribed authority.	100% of the profits derived from such business for 10 consecutive years.
iii) a) Undertaking which begins commercial production of mineral oil in Regions other than North Eastern Region b) Undertaking which begins refining of mineral oil & begins commercial production of natural gas	100% of profit derived from such business for the first 7 years.
iv) Undertaking engaged in developing and building housing projects approved before 31.03.2008 by a local authority – size of the plot of land minimum 1 acre and residential unit built up area not exceeding specified extent.	100% of profits derived from such business
v) Industrial undertaking deriving profit from the business of setting up and operating a cold chain facility for agricultural produce.	100% for initial 5 yrs. Thereafter 25% (30% in case of companies) for 5 years.
vi) Other Industrial undertakings which are small scale Industries, manufacturing or producing any article or thing or operating cold storage plant.	25% (30% in case of companies) for 10 for initial assessment years.
vii) Undertaking engaged in integrated business of handling, storage and transportation of food grains.	100% for initial 5 yrs. Thereafter 25% (30% in case of companies) for 5 yrs.
viii) Multiplex theatres or convention center	50% for initial 5 years.
ix) Undertaking deriving profits from the business of operating and maintaining hospital in a rural area having atleast 100 beds for patients and constructed as per the regulations of the local authority.	100% for initial 5 years.

Notes:
The total period of deduction would be twelve consecutive assessment years where the assessee is a co-operative society.

TAXATION OF INDIVIDUALS

Residential Status

Taxation of individuals is based on their residential status, which is determined by physical presence of the individuals in India during the tax year. Depending upon the period of stay of the individual in India in the specified tax years, the individual would be classified as:

- Resident in India
- Not-ordinarily resident in India
- Non-Resident in India

Incidence of Income Tax
Depending upon the residential status of the individual, the individual would be subject to income tax in India. The following table would display the tax incidence in the hands of the Individual under different circumstances

Description of Income	Residential Status		
	Resident and Ordinary Resident	Resident but not Ordinary Resident	Non Resident
Earnings for services performed in India and received anywhere	Taxable	Taxable	Taxable
Earnings for services performed outside, but received in India	Taxable	Taxable	Taxable
Earnings received outside India for services performed outside	Taxable	Non - Taxable	Non -Taxable

Individuals who are classified as non - resident, or resident but not ordinary resident will not be subject to tax on investment Income, such as property income, interest, dividends and capital gains, arising or earned outside of India. This overseas income may subsequently be freely remitted to India without attracting any Income Tax liability in India.

Taxable Year and Payment of Advance Tax

The tax year or the financial year to determine the taxable income is from 1st April to 31st March. The Advance tax as worked out by the Individuals are payable in installments during the tax year, as follows:

Percentage of Total Tax Payable for the Tax Year	**On or Before**
30	15 September
60	15 December
100	15 March

Computation of Taxable Income

Remuneration derived for performance of work done in India is taxable in India even if received outside India. Such remuneration includes salaries and wages, pensions, gratuity, fees, commissions, profits in lieu of or in addition to salary, advance salary and perquisites. Taxable payments include all allowances, deferred compensation and tax equalization / reimbursements.

Various perquisites allowed under the Act, subject to taxability are as follows:

- Housing provided by an employer is taxable to an employee
- Utilities provided free of charge are generally taxed at cost
- Cars provided for business and personal purposes

Taxation of Employee Stock Options

With abolition of Fringe Benefit Tax (FBT) from 2009-2010, FBT on ESOPs has been abolished and they have been included in the purview of Perquisites under Section 17(2) of the Income Tax Act. The value of the ESOPs determined on the date of exercise, as the difference between the fair market value of the shares as on the date of exercise and the exercise price, would be taxable as a perquisite in the hands of the employees.

Taxation of Expatriates

Nonresident employees are taxable only on remuneration (including the value of perquisites) for services rendered in India, wherever paid. Any other income is taxable only if it is received in India or arises or is deemed to arise in India.

- Remuneration from an employer is not taxable if the expatriate's stay in India does not exceed 90 days (183 days under treaties during the year if certain conditions are fulfilled.
- Timing of arrival and departure maybe planned to take advantage of the 90 / 183 - day rules.
- Expatriate technicians (including nonresident Indians) satisfying specified conditions are not liable to pay further tax on remuneration for four years if the employer bears the tax.
- Tax clearance is necessary before any expatriate departure if the stay in India is continuous for more than 120 days.
- In most other respects, expatriates are taxed on the same basis as Indians.

TAXATION OF CAPITAL GAINS

General

Capital gains on transfer of capital assets, including the shares of any Indian Company, situated in India are taxable.

- Long Term Capital Gains
  Capital gains on assets held for over 36 months (12 months for securities on which Securities Transaction Taxes has been deducted) are taxed as long term capital gains.
- Short Term Capital Gains
  Capital gains on assets held for less than 36 months (12 months for securities on which Securities Transaction Taxes has been deducted) are taxed as short-term capital gains.

  It has been provided that an unlisted security and a unit of a mutual fund (other than an equity oriented mutual fund) shall be a short-term capital asset if it is held for not more than thirty-six months.

Computation of Income from Capital Gains

Gains arising from the sale of an undertaking (slump sale) are taxed as capital gains arising from the transfer of capital asset.

Taxable capital gains are computed after the deduction of the following from the consideration on sale:

Expenditure incurred wholly in connection with the transfer; and
Cost of acquisition of the asset and cost of improvement thereto (the cost of acquisition in case of slump sale is deemed to be the net worth of the business transferred).

Long term capital gains of residents are subject to indexation benefits. Gains from disinvestment of shares by a non-resident are calculated in the respective foreign currency to protect them from exchange rate risks

Capital losses can be carried forward for eight years and can be offset only against capital gains.

Tax rates for Corporates and Individuals

For Individuals

Income	Tax	Education cess	SHEC	Total %
Rs. 2,50,000 to Rs. 5,00,000 (Individuals other than covered under 2 below)	10	0.20	0.10	10.30
Rs. 5,00,001 to Rs. 10,00,000	20	0.40	0.20	20.60
Rs. 10,00,001 and above	30	0.60	0.30	30.90

1. In the case of a resident individual of the age of sixty years or above, the basic exemption limit is Rs. 3,00,000/-. For income upto Rs. 5,00,000, tax @ 10.30 % shall be applicable.
2. In the case of a resident individual of the age of eighty years or above, the basic exemption limit is Rs. 5,00,000/-. For income upto Rs. 10,00,000, tax @ 20.60 % and for the income exceeding Rs. 10,00,000, tax @ 30.90% shall be applicable.
3. Surcharge is applicable @ 12 per cent if income is in excess of Rs. 1,00,00,000 from A.Y. 2016-17 onwards i.e. Financial Year Ending 31st March, 2016 onwards.

For Domestic Companies

- Domestic companies are taxable @ 30 per cent.
- Surcharge is applicable @ 7 per cent if taxable income is in excess of Rs. 1,00,00,000 and @ 12 per cent if taxable income is in excess of Rs. 10,00,00,000.
- Education Cess is applicable @ 2 per cent on income tax (inclusive of surcharge, if any).
- Secondary and Higher Education Cess is applicable @ 1 per cent on income tax (inclusive of surcharge, if any).

For Foreign Companies

- Foreign companies are taxable -
  - @ 50% of on so much of the taxable income as consist of (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved by the Central Government.
  - @ 40% of the balance
- Surcharge is applicable @ 2 per cent if taxable income is in excess of Rs. 1,00,00,000 and @ 5 per cent if taxable income is in excess of Rs. 10,00,00,000.
- Education Cess is applicable @ 2 per cent on income tax (inclusive of surcharge, if any).
- Secondary and Higher Education Cess is applicable @ 1 per cent on income tax (inclusive of surcharge, if any).

Capital Gains

Particulars	Short-term capital gains tax (Refer note 1 below)	Long-term capital gains tax (Refer note 2 below)
Sale transactions of securities which attract STT	15 per cent	NIL
Sale transaction of securities not attracting STT:		
Individuals (resident and nonresidents)	Progressive slab rates	20 per cent with indexation; 10 per cent without indexation (for units / zero coupon bonds)
Partnerships (resident and non- resident	30 per cent	
Resident Companies	30 per cent	
Overseas financial organizations specified in section 115AB	40 per cent (corporate) 30 per cent (non-corporate	10 per cent
FIIs	30 per cent	10 per cent
Other Foreign companies	40 per cent	20 per cent with indexation; 10 per cent without indexation (for units/zero coupon bonds)
Local Authority	30 per cent	
Co-operative society	Progressive slab rates	

1. To be increased by surcharge and education cess
2. To be increased by surcharge and education cess

TDS Rates For Assessment Year 2016-17 (Accounting Year Ending On 31 March 2016)

On Payments To Resident Payee (Subject To Notes Below)

Sr No	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partnership Firm	Individual , HUF, AOP, BOI
				Rate (%)		
1	Interest on Securities (Refer Note 5)	No Threshold Limit	193	10	10	10
2	Other Interest (Refer Note 6)	Payment in excess of Rs. 5,000	194A	10	10	10
3	Winning From Lotteries	Payment in excess of Rs. 10,000	194B	30	30	30
4	Winning From Horse Race	Payment in excess of Rs. 5,000	194BB	30	30	30
5	Payment to contractors(other than for transport)	Payment in excess of Rs. 30,000 per transaction or Rs. 75,000 p.a.	194C	2	2	1
6	Insurance Commission	Payment in excess of Rs. 20,000	194D	10	10	10
7	Sum received for Life Insurance Policy including bonus (except exempt u/s 10D)	Payment in excess of Rs. 100,000 p.a.	194DA	2	2	2
8	Commission on Sale of Lottery Tickets	Payment in excess of Rs. 1,000	194G	10	10	10
9	Other Commission / Brokerage	Payment in excess of Rs. 5,000 p.a.	194H	10	10	10
10	Rent for Land or Building/ Furniture and Fixture	Payment in excess of Rs. 1,80,000 p.a.	194I	10	10	10
	Rent for Plant & machinery, Equipments			2	2	2
11	Consideration for transfer of Immovable Property (other than agricultural land) (Refer Note 4)	Sale Consideration must exceeds Rs. 50,00,000	194I A	1	1	1
12	Professional Fees / Royalties (Refer Note 7)	Payment in excess of Rs. 30,000 p.a.	194J	10	10	10
13	Consideration for complusory acquistion of Immovable Property (other than agricultural land)	Payment in excess of Rs. 200,000 p.a.	194LA	10	10	10
14	Income by way of interest from SPV distributed by Business Trusts i.e. REITs & Invits	No Threshold Limit	194LBA	10	10	10

NOTES:

1. In case of residents (other than company) the tax amount deducted at source shall be increased by surcharge at the rate of 12% of such tax where the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 1 crore.

2. In case of domestic companies, the TDS rate shall be increased by surcharge as below:

   (i) If the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 1 crore but does not exceeds Rs. 10 crore, then surcharge would be applicable at the rate of 7%

   (ii) If the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 10 crore, then surcharge would be applicable at the rate of 12%

3. Cess @ 3% shall be levied additionally.

4. Surcharge and Cess shall not be applicable where tax is deducted at source u/s 194IA from sale consideration of immovable property.

5. In case payment of interest on listed debentures to individuals TDS is required to be deducted on payments in excess of Rs. 5,000/-

6. For interest on Bank Deposits and Deposits with Post Office, the threshold limit is Rs 10,000.

7. Any payments to a director of a company other than those on which TDS is dedutible u/s 192 are specifically covered u/s 194J

8. W.e.f. 1st April, 2010, the rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.

ON PAYMENTS TO NON- RESIDENT PAYEE (SUBJECT TO NOTES BELOW)

Sr. no	Payments to Non-Resident Payee	Criteria for deduction	Section	Rate (%)
1	Tax on Short Term Capital Gains	On sale of shares or units of mutual funds where STT is paid	111A	15
		On sale of shares or units of mutual funds where STT is not paid	45	40
2	Tax on Long Term Capital Gains	Not being long term capital gains referred to section 10(33), 10(36) and 10(38) ie. on listed shares, units of an equity oriented fund, or units of business trust i.e. REITs & Invits	112	20
3	Winning From Lotteries	Payment in excess of Rs. 10,000	194B	30
4	Winning From Horse Race	Payment in excess of Rs. 5,000	194BB	30
5	Tax on royalty on copyrights or on fees for technical services matters included in industrial policy or under approved agreements by an Indian concern or by Government of India	Agreements made / entered after 31st March, 1976	115A(1B)	10
6	Tax on Interest	On borrowings in foreign currency:- (a) by an Indian concern or by Government of India other than interest refered in (b) or (c) below	115A(1)(a)	20
		(b) On notified infrastructure debt fund	194LB	5
		(c) By Specified Companies or Business Trusts (REITs & Invits) under a loan agreement or any long term bond	194C	5
7	Payments to Non-Resident Sportsmen/Entertainer/Sports Association	Other than to a non-resident being an Indian citizen	194E	20
8	Other income	In case of non-resident companies	-	40
		In case of non-residents other than non-resident companies	-	30
9	Income by way of interest from SPV distributed by Business Trusts (REITS & Invits)	No Threshold Limit	194LBA	5

NOTES:

1. In case of non-residents (other than company) the tax amount deducted at source shall be increased by surcharge at the rate of 12% of such tax where the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 1 crore.

2. In case of foreign companies, the TDS rate shall be increased by surcharge as below:

   (a) If the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 1 crore but does not exceeds Rs. 10 crore, then surcharge would be applicable at the rate of 2%

   (b) If the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 10 crore, then surcharge would be applicable at the rate of 5%

3. Cess @ 3% shall be levied additionally.

4. Treaty rates will differ from Country to Country. Treaty rates will apply only if Tax Residency Certificate is produced.

5. NRI's opting to be taxed under chapter XII-A, tax shall be deductible at the rate of ten percent on long term capital gains referred to in section 115E and twenty percent on investment income.

6. W.e.f. 1st April, 2010, the rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee. However this condition is not applicable in respect of Interest covered u/s 194LC.

Dividend Distribution Tax (DDT)

Presently, section 115-O provides that any amount declared /distributed or paid by a Domestic company by way of dividends shall be liable to DDT @ 15 per cent on gross amount. The effective tax rate would be 17.304 (including surcharge @12 per cent, education cess @2 per cent and secondary & higher education cess @1 per cent).

Fringe Benefit Tax (FBT)

The Finance Act 2009 has abolished the Fringe Benefit Tax which was introduced earlier by the Finance Act, 2005. Accordingly, benefits earlier taxed as fringe benefits in the hands of employer would be now taxable as perquisites in the hands of employee.

Securities Transaction Tax (STT)

Effective 1st October 2004, new levy under the nomenclature 'Securities Transaction Tax' of 0.125 to 0.1 per cent has been introduced on all types of transactions with respect to listed securities.

Wealth Tax

Only certain specified assets are subject to Wealth tax. Such specified assets include residential houses, urban land, jewellery, bullion, motor cars, aircraft, boats and yachts. However, assets such as shares, securities, bonds, investments in mutual funds and bank deposits are exempt from wealth tax. One residential house is also exempt from wealth tax.

Net wealth exceeding Rs. 3,000,000 is taxable at a flat rate of 1 per cent.

Wealth tax act has been abolished from 01st April 2015 for Assessment Years 2016-17 onwards.

IMPORTANT AMENDMENTS ARE IMPLEMENTED BY THE FINANCE ACT, 2015

The following paragraphs provide an overview of important amendments by the Finance Act, 2015, which are applicable for the accounting year beginning from April 1, 2016.

Section 2: Definitions

Section 2(13A)
Clause (13A) is substituted of the said section in order to define a "business trust" to mean a trust registered as,–

(i) an Infrastructure Investment Trust under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992; or

(ii) a Real Estate Investment Trust under the Securities and Exchange Board of India (Real Estate Investment Trusts)
Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992, and the units of which are required to be listed on a recognized stock exchange in accordance with the aforesaid regulations.

Section 2(15)
Clause (15) is amended of the aforesaid section to provide that the definition of charitable purpose shall include "yoga" as a separate category on the lines of education and medical relief.

Further clause (15) amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of
the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

Section 2(37A)
Clause (37A) is amended of the said section to provide that for the purposes of deduction of tax under section 194LBA, the "rates in force", in relation to an assessment year or financial year shall mean the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year.

Section 2(42A)
The existing provisions contained in clause (42A) of the said section provide the definition of the term "short-term capital asset". Explanation 1 of the said clause provides for determining the period for which the capital asset is held by the assessee.
Clause (i) of the said Explanation amended to provide that in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, there shall be included the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee.
These amendments will take effect from assessment year 2016-17.

Section 10 of the Income tax Act relating to incomes not included in total income.

Section 10(11A)
A new clause (11A) is inserted so as to provide that any interest/withdrawals from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014

made under the Government Savings Bank Act, 1873, shall not be included in the total income of the assessee.

Section 10(23EE)

A new clause (23EE) is included in the aforesaid section so as to provide for exemption in respect of any specified income of such Core Settlement Guarantee Fund, set up by a recognised clearing corporation in accordance with the regulations, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Section 10(23FB)

This section provides that any income of a venture capital company or venture capital fund from investment in a venture capital undertaking shall not be included in total income.

A new proviso is inserted to the said clause to provide that the said clause shall not apply to a venture capital company or venture capital fund, being an investment fund specified in clause (a) of the Explanation 1 to section 115 UB, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016.

Section 10(23FBA)

A new clause (23FBA) is included to provide that any income of an investment fund other than the income chargeable under the head "Profits and gains of business or profession" shall not be included in the total income of such fund.

Section 10(23FBB)

A new clause (23FBB) is included to provide that any income of a person accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head "Profits and gains of business or profession" shall not be included in total income of such person.

Section 10(23FCA)

A new clause (23FCA) is inserted so as to provide that any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust, shall not be included in the total income.

Section 10(23FD)

Clause (23FD) is amended of the said section to provide that any distributed income, referred to in section 115UA, received by a unit holder from the business trust, being that proportion of the income which is of the same nature as income by way of renting or leasing or letting out any real estate asset owned directly by the business trust, shall be included in total income and not be exempted.

Section 10(38)

Clause (38) is amended of the said section to provide that any income in the nature of long term capital gain arising from transfer of units of a business trust which were acquired in consideration of exchange of shares of a special purpose vehicle and on which securities transaction tax has been paid shall not be included in the total income of the sponsor.

These amendments has become effective from assessment year 2016-17.

Section 10(23C)

The existing provisions of clause (23C) of the said section provide for exemption from tax in respect of the income of certain charitable funds or institutions like the Prime Minister's National Relief Fund; the Prime Minister's Fund (Promotion of Folk Art); the Prime Minister's Aid to Students Fund; the National Foundation for Communal Harmony etc.

The aforesaid clause is amended by inserting two new sub-clauses (iiiaa) and (iiiaaa) so as to exempt income received by any person on behalf of the Swachh Bharat Kosh, set up by the Central Government and to exempt income received by any person on behalf of the Clean Ganga Fund, set up by the Central Government.
These amendments has become effective retrospectively from 1st of April, 2015 and accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.

Section 32: Increase in Additional depreciation

The section is amended to allow higher additional depreciation at the rate of 35% (instead of existing additional depreciation of 20%) on actual cost incurred for acquisition and installation of new machinery and plant (other than a ship and aircraft) by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana during the period beginning on 1st day of April, 2015 and ending before the 1st day of April, 2020. The eligible machinery or plant for this purpose shall not include the machinery or plant which are currently not eligible for additional depreciation as per the existing proviso to section 32(1)(iia) of the Act.
Consequential amendments in the second proviso to section 32(1) of the Act for applying the existing restriction of the allowance to the extent of 50% for assets used for the purpose of business for less than 180 days in the year of acquisition and installation. Balance 50% of the allowance is also to be allowed in the immediately succeeding financial year.
These amendments has become effective from assessment year 2016-17.

Section 32AD: Additional Investment Allowance to a Manufacturing Company

A new section 32AD is inserted in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 to 31st March, 2020 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana.
This deduction shall be available over and above the existing deduction available under section 32AC of the Act.
With a view to ensure that the manufacturing units which are set up by availing this proposed incentive actually contribute to economic growth of these backward areas by carrying out the activity of manufacturing for a substantial period of time, it is proposed to provide suitable safeguards for restricting the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply to the amalgamating or demerged company or the predecessor in a case of amalgamation or demerger or business reorganisation but shall continue to apply to the amalgamated company or resulting company or successor, as the case may be.
These amendments has become effective from assessment year 2016-17.

Section 35(2AB): Expenditure on Scientific research

Under existing provision of section 35(2AB) of the Act, weighted deduction of 200% is allowed to a company engaged in the business of biotechnology or manufacturing of goods (except items specified in Schedule-XI) for the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research carried out in an approved in-house research and development facility.

For availing this weighted deduction, the company is required to enter into an agreement with the prescribed authority and also required to obtain his approval. Such authority is required to send the report regarding approval to DGIT in prescribed Form who generally does not have jurisdiction over the assessee company. Further, the company is required to maintain separate books of account for approved R&D facility and is also required to get the account audited. However, the copy of audit report is required to be submitted to such authority only.

The provisions of section 35(2AB) of the Act are amended to provide that deduction under the said section shall be allowed if the company enters into an agreement with the prescribed authority for cooperation in such research and development facility and fulfills prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports to the prescribed authority. It is also proposed that the report referred to therein may be sent by such authority to the Principal Chief Commissioner or Chief Commissioner having jurisdiction over the company claiming the weighted deduction under the said section.
These amendments has become effective from 1st April, 2015 (i.e. AY 2016-17)

Section 6 - Residence in India – Computing period of stay in India for crew members and amendment in conditions for residency status in respect of Companies

Period of Stay for crew members
The existing section 6 deals with the provisions for determining the residential status of an assessee in India. Clause (1) of section 6 provides the conditions under which an individual is held to be resident in India. The determination is based, inter alia, on the number of days during which such individual has been in India during a previous year.
Explanation to section 6 is inserted for individuals who are Indian citizens and a member of the crew of foreign bound ships leaving India. It provides that the period or periods of stay in India of these individuals shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.
This amendment has become effective retrospectively from 1st April, 2015.

Residential Status of Company
As per the existing provisions of clause (3) of section 6, a company is said to be resident in India in any previous year, if-
(i) it is an Indian company; or
(ii) during that year, the control and management of its affairs is situated wholly in India.
The provisions of clause (3) of section 6 is amended to provide that a person being a company shall be said to be resident in India in any previous year, if-
(i) it is an Indian company; or
(ii) itsplace of effective management, at any time in that year, is in India.
Further, an Explanation is inserted to clause (3) of section 6 to define the place of effective management to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.
These amendments will take effect from 1st April, 2016.

Section 9(1)(i) - Clarifications on Indirect Transfer Provisions
The existing provisions of section 9 deals with cases of income which are deemed to accrue or arise in India in case of non-residents. Clause (i) to Sec 9(1) provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of section 9. The amendments, inter alia, included insertion of Explanation 5 in section 9(1)(i) w.r.e.f. 1.04.1962. The Explanation 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.
Two new Explanations inserted in section 9 in order to bring more clarity:-
(i) the share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,-
(a) exceeds the amount of ten crore rupees; and

(b) represents at least fifty per cent of the value of all the assets owned by the company or entity.
(ii) value of an asset shall mean the fair market value of such asset without reduction of liabilities, if any, in respect of the asset.
(iii) the specified date of valuation shall be the date on which the accounting period of the company or entity, as the case may be, ends preceding the date of transfer. However, if book value on date of transfer > 15% of book value on last balance sheet date then date of transfer shall be the specified date of valuation.
(iv) accounting period shall be each period of twelve months ending with the 31st day of March. However, if a period adopted ends on a day other than the 31st day of March for the purpose of (i) complying with the provisions of the tax laws of the territory, of which it is a resident, for tax purposes; or (ii) reporting to persons holding the share or interest, then such period shall be considered as accounting period
(v) No income shall be deemed to accrue or arise in India to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises,
(a) neither holds the right of control or management,
(b) nor holds voting power or share capital or interest exceeding five per cent of the total voting power or total share capital, in the foreign company or entity directly holding the Indian assets (direct holding company).
(vi) Further, in case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if he along with its associated enterprises,-
(a) neither holds the right of management or control in relation to such company or the entity,
(b) nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding five percent in the direct holding company or entity.
(vii) associated enterprise shall have the meaning assigned to it in section 92A
(viii) Where all the assets owned, directly or indirectly by the company are not located in India, only such proportionate income as is attributable shall be deemed to accrue or arise in India. There shall be further rules which shall provide for
(a) the manner of determination of fair market value of the Indian assets vis-à-vis global assets of the foreign company
(b) the method for determination of proportionality.
These amendments will take effect from 1st April, 2016.

Section 9(1)(v) - Clarifications on Interest received by the non-residents engaged in banking business

A new Explanation has been inserted in clause (v) to section 9(1) which provides that in the case of a non-residents engaged in the business of banking, any interest payable by the permanent establishment ('PE') in India of such non-resident to the head office outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in India. This shall be in addition to any income attributable to the PE in India. Further, such PE shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery shall apply.
The meaning of "permanent establishment" shall be as assigned to it in clause (iiia) of section 92F.
These amendments will take effect from 1st April, 2016.

Section 9A - Certain Activities not to constitute business connection in India

Under the existing provisions, the presence of a fund manager in India may create sufficient nexus of the off-shore fund with India and may constitute a business connection in India even though the fund manager may be an independent person. Further, presence of the fund manager may also lead to the off shore fund being held to be resident in India on the basis of its control and management being in India.

A new section 9A has been inserted which shall provide that the fund management activity carried out through an eligible fund manager acting on behalf of an eligible investment fund shall not constitute business connection in India of the said fund. For a fund to qualify as an eligible investment fund and for a fund manager to qualify as an eligible fund manager certain conditions are required to be fulfilled. Further such fund is required to furnish within 90 days from the end of the financial year, a statement in the prescribed form, to the prescribed income-tax authority containing information relating to the fulfillment of these conditions and also provide such other relevant information or documents as may be prescribed. On failure to submit the same, a penalty of Rs. 5 lakh shall be leviable on the fund.
Further, it is amended that such fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.
The section further provides for the definitions of "associate", "corpus", "connected person", "entity" and "specified regulations" for the purposes of this Section.
These amendments will take effect from 1st April, 2016.

Furnishing of information of taxable as well non-taxable remittances [Sec 195]
As per existing of sub-section (6) of section 195, any person making remittances to non-resident were to furnish the information relating to the payment in such form and manner as prescribed by CBDT. The information provided in such form was only against those payments which were taxable remittances.
The provisions of section 195 are amended to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non-resident shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed.
This amendment has become effective from 1st June 2015.

No deduction to be made on payment made under Life insurance policy and on accumulated balance due to an employee on filing Form 15G/15H [Sec 197A]
The existing provisions of section 197A provide that tax shall not be deducted, if the recipient of certain payment on which tax is deductible furnishes Form No.15G/15H to payer declaring that his tax liability for the year would be nil. Further existing provisions of Sec 194DA provide for deduction of tax at source @ 2% from payments made (Rs 1,00,000 and above) during a financial year, under life insurance policy, which are chargeable to tax and Sec 192A provides for deduction of tax at source @ 10% from payments made during a financial year, on accumulated balance of employee's provident fund due to an employee.
The provisions of section 197A has been amended to include Sec 192A and Sec 194DA whereby no tax shall be deducted at source if the recipients of payments made under section 192A and 194DA files self-declaration in Form No.15G/15H for non-deduction of tax at source to the payer.
This amendment has become effective from 1st June, 2015.

Section 80C: Tax benefits for the girl child under the SukanyaSamriddhi Account Scheme
Sec 80C has been amended so as to provide deduction to an individual for a sum paid or deposited during the year in the Scheme in the name of any girl child of such individual or in the name of any girl child for whom such individual is the legal guardian.
The aforesaid amendment has been made effective retrospectively from 1st April, 2014 (i.e. AY 2015-16).

Section 80CCC: Increase in limit of deduction from gross total income
Under the existing provisions contained in Sec 80CCC(1) an individual is allowed a deduction upto Rs. 1,00,000/- in the computation of his total income, of an amount paid or deposited by him for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from a fund set up under a pension scheme.

Sec 80CCC(1) has been amended so as to raise the limit of deduction from Rs. 1,00,000/- to Rs. 1,50,000/-, within the overall limit provided in Sec 80CCE w.e.f. 1st April, 2015 i.e. assessment year 2016-17, to promote social security.

Section 80CCD: Additional deduction

Under the existing provisions contained in Sec 80CCD(1) if an individual, employed by the Central Government on or after 1st January, 2004, or being an individual employed by any other employer, or any other assessee being an individual has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding ten per cent of his salary in the case of an employee and ten per cent of the gross total income in case of any other individual is allowed. Further, Sec 80CCD (1A) provides that the amount of deduction under sub-section (1) shall not exceed Rs. 1,00,000/-.

A new sub-section (1B) has been inserted so as to provide for an additional deduction upto Rs. 50,000/- in respect of any contribution made by an individual under the notified pension scheme.

The aforesaid amendment has become effective from 1st April, 2015 (i.e. AY 2016-17).

Section 80D: Amendment relating to deduction in respect of health insurance premium

Under the existing provisions contained in section 80D, a deduction upto Rs. 15,000/- is allowed to an assessee, being an individual in respect of health insurance premium paid, to effect or to keep in force an insurance on the health of the assessee or his family or any payment made on account of preventive health check up of the assessee or his family; and an additional deduction of Rs. 15,000/- is provided to an individual assessee to effect or to keep in force insurance on the health of the parent or parents of the assessee.

The section presently provides for a deduction of Rs. 20,000/- (instead of Rs. 15,000/-) if the person insured is a senior citizen of sixty years of age or above.

Section 80D has been amended so as to raise the limit of deduction from Rs. 15,000/- to Rs. 25,000/-. It is further amended to raise the limit of deduction for senior citizens from Rs. 20,000/- to Rs. 30,000/-.

Further, it is also amended to provide that any payment made on account of medical expenditure in respect of a very senior citizen (80 years or more), (if no payment has been made to keep in force an insurance on the health of such person), as does not exceed Rs. 30,000/- shall be allowed as deduction.

The aforesaid amendment has become effective from 1st April, 2015 (i.e. AY 2016-17).

Section 80DD and Section 80U: Raising the limit of deduction for persons with disability and severe disability

The existing provisions of section 80DD provide for a deduction upto Rs. 50,000/- to an individual or HUF, who is a resident in India, who has incurred an expenditure for the medical treatment of a dependant, being a person with disability or paid any amount to LIC or any other insurer for the maintenance of a disabled dependant. If the dependant is suffering from severe disability then deduction upto Rs. 1,00,000/- can be claim.

Similarly, the existing provisions of section 80U provide for a deduction of Rs. 50,000/- to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. If the person is suffering from severe disability then deduction of Rs. 1,00,000/-.

Section 80DD and section 80U has been amended so as to raise the limit of deduction in respect of a person with disability from Rs. 50,000 to Rs. 75,000/- and to raise the limit of deduction in respect of a person with severe disability from Rs. 1,00,000/- to Rs. 1,25,000/-.

The aforesaid amendment has become effective from 1st April, 2015 (i.e. AY 2016-17).

Section 80DDB: Raising the limit of deduction

Under the existing provisions of section 80DDB of the Act, an Individual (or HUF), resident in India is allowed a deduction of a sum not exceeding Rs. 40,000/-, being the amount actually incurred on himself or dependent relative (or member of HUF), for the medical treatment of such disease or ailment as may be specified in the rules. This deduction is allowed up to Rs. 60,000/- where the expenditure is in respect of a senior citizen (60 years or more).
Section 80DDB is amended to provide for a higher limit of deduction of upto Rs. 80,000, for the expenditure incurred in respect of the medical treatment of a "very senior citizen" (80 years or more).
The aforesaid amendment has become effective from 1st April, 2015 (i.e. AY 2016-17).

Section 80G: Donation made to following institution/Funds will be eligible for 100% deduction
Section 80G has been amended as to provide 100% deduction from the total income of the donor in respect of donations made by any donor to the Swachh Bharat Kosh and donations made by resident donors to Clean Ganga Fund. However, any sum spent in pursuance of Corporate Social Responsibility under Sec 135(5) of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor. This amendment will take effect retrospectively from 1st April, 2014 (i.e. AY 2015-16).
Section 80G has also been amended as to provide 100% deduction from the total income of the donor in respect of donations made to the National Fund for Control of Drug Abuse.
This amendment has become effective from 1st April, 2015 (i.e. AY 2016-17).

Section 80JJAA: Deduction for employment of new workmen
Section 80JJA has been amended as to extend the benefit to all assessee having manufacturing units rather than restricting it to corporate assessee only. Further, it is amended to extend the benefit under the section to units employing even 50 instead of 100 regular workmen.
The quantum of deduction allowed will be equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.
Additional wages means the wages paid to the new regular workmen in excess of fifty workmen employed during the previous year.
The aforesaid amendment has become effcetive from 1st April, 2015 (i.e. AY 2016-17).

Section 115A: Tax on Royalty and Fees for Technical Service in the case of non-resident
As per existing section 115A, the rate of tax in cases of non-resident tax payer where the total income includes any income by way of Royalty and Fees for Technical Services received by a non-resident from Government of India or an Indian party was 25 percent
It is amended to reduce the rate of income tax applicable on payments made to non-resident in the nature of Royalty and Fees for Technical Services to 10 percent.
This amendment will take effect from 1st April, 2016.

Section 115ACA: Scope of provision relating to tax on income from Global Depository Receipts (GDR) purchased in foreign currency or capital gains therefrom restricted in respect of GDR issued by companies listed on recognized Stock Exchange in India
Section 115ACA relating to tax on income from Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer has been amended with a view to restrict the benefit of provisions only in respect of income arising from GDRs issued by listed company.
As per existing explanation (a) to section 115ACA, the definition of Global Depository Receipts means an instrument in form of depository receipt or certificate

created by the Overseas Depository Bank outside India and issued to non-resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company.
The definition of Global Depository Receipts issued to non-resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company has been amended. The ordinary shares of issuing company shall now mean a company listed on a recognized stock exchange in India.
This amendment will take effect from 1st April, 2016.

SETTLEMENT COMMISSION

Section 245A: Widening the scope of the term "case" defined for application to Settlement Commission
Amendment to Clause (i) of the Explanation to clause (b) of section 245A
Existing clause (i) of the Explanation to clause (b) has been substituted to provide that where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well even if notice under section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under section 139 of the Act or in response to notice under section 142 of the Act.
This amendment has become effective from 1stJune, 2015.

Amendment to Clause (iv) of the Explanation to clause (b)
Clause (iv) of the Explanation has been amended to provide that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia), shall be deemed to have commenced from the date on which a return of income is furnished under section 139 or in response to notice under section 142 and concluded on the date on which the assessment is made or on the expiry of two years from the end of relevant assessment year, in a case where no assessment is made.
This amendment has become effective from 1stJune, 2015.

Section 245D: Sub-section (6B) - Rectification of mistake apparent from the record
Sub-section (6B) of section 245D provided that Settlement Commission could pass an order rectifying mistake apparent from record within six months from the date of order.
Sub-section (6B) has been amended to provide that Settlement Commission can pass an order for rectification of mistake apparent from the record at any time within a period of six months from the end of month in which the order was passed; and on an application made by the Principal Commissioner or Commissioner before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.
This amendment has become effective from 1stJune, 2015.

Section 245H: Power of Settlement Commission to grant immunity from prosecution and penalty
The Settlement Commission was empowered to grant immunity from prosecution and penalty to any person who made an application before the commission if it may think fit to grant such immunity to such person who has co-operated in the proceedings and made full and true disclosure of his income.
Sub-section (1) of section 245H has been amended so as to provide that the Settlement Commission while granting immunity to any person shall have to record the reasons in writing in the order passed by it.
This amendment has become effective from 1stJune, 2015.

Section 245HA: Widening the scope for abatement of proceeding before Settlement Commission

Sub-section (1) of section 245HA has been amended by inserting clause (iiia) to provide that where in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed without providing the terms of settlement the proceedings before the Settlement Commission shall abate on the day on which such order under sub-section (4) of section 245D was passed.
This amendment has become effective from 1stJune, 2015.

Section 245K: Widening the scope of cases barring subsequent application for settlement before Settlement Commission

Section 245K of the Income-tax Act has been amended to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means,-
(i) where such person is an individual, any company in which such person holds more than fifty percent. of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty percent of the profits at any time, or any Hindu undivided family in which such person is a karta;
(ii) where such person is a company, any individual who held more than fifty percent of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;
(iii) where such person is a firm or association of person or body of individual, any individual who was entitled to more than fifty percent of the profits in such firm, association of person or body of individual, at any time before the date of application before the Settlement Commission by such person;
(iv) where such person is an Hindu undivided family, the karta of that Hindu undivided family.
This amendment has become effective from 1st June, 2015.

TRANSFER PRICING

Section 92BA: Threshold for applicability of Domestic Transfer Pricing provisions increased

The existing provisions of Section 92BA introduced in the Finance Act of 2012, which had been applicable from assessment year 2013-14, had included certain domestic transactions under the ambit of transfer pricing only if the aggregate value of such Specified Domestic Transactions exceeded the monetary threshold of Rupees Five crores during the relevant financial year.
Section 92BA is amended to increase the prescribed threshold of the aggregate value of Specified Domestic Transactions to a sum of Rupees Twenty Crore. The amendment is a move to address the concerns raised on compliance cost incurred in case of small businesses on account of low threshold of five crore rupees.
This amendment will take effect from 1st April, 2016.

Section 95: Deferment of provisions relating to General Anti Avoidance Rule ('GAAR')

The existing provisions of Section 95 introduced by the Finance Act, 2013 dealing with General Anti-Avoidance Rule were to be made effective from 1st April 2016 i.e. in respect of financial year 2015 -16 corresponding to Assessment Year 2016 -17 and subsequent years.
It is amended to renumber the existing section as sub-section (1) and it is also amended to insert a new sub-section (2) to include the proposed deferment of the GAAR provisions by two years and the GAAR provisions are to be made applicable from the financial year 2017-18 corresponding to Assessment Year 2018-2019 and subsequent years. Further, investments made up to 31.03.2017 are amended to be protected from the applicability of GAAR by amendment in the relevant rules in this regard.
This amendment has become effective from 1st April, 2015.

Section 115JB: Rationalization of Minimum Alternate Tax

Sec 115JB provides that in case of a company, if the tax payable on the total income as computed according to the normal provisions under the Act is less than 18.5 percent of its book profit, such book profit shall be deemed to be the total income of the company and a minimum alternate tax at the rate of 18.5 percent shall be payable by the company for the relevant assessment year on such book profit.

Amendment in respect of income from share in AOP/BOI

Explanation 1 below sub-section (2) has been amended to insert clause (iic) to provide that if an amount is credited to the statement of profit and loss of the company being income which is in the nature of share of income as a member of an association of persons or body of individuals on which no income-tax is payable in accordance with the provisions of section 86 then it shall be reduced from the book profit for the purposes of calculation of Minimum Alternate Tax.

Consequently, Explanation 1 below sub-section (2) has also been amended to insert clause (fa) to provide that the book profit shall be increased by the amount or amounts of expenditure relatable to the income as explained above.

Amendment in respect of income of FIIs

Explanation 1 below sub-section (2)has been amended to insert clause (iid) to provide that in case of assessee company being a Foreign Institutional Investor (FII) which has invested in securities in accordance with the regulations made under the Securities and Exchange Board of India Act,1992 and the amount credited to the the statement of profit and loss includes income from transactions in such securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) then such income shall be reduced from the book profit for the purposes of calculation of minimum alternate tax.

Consequently, Explanation 1 below sub-section (2) has also been amended to insert clause (fb) to provide that the book profit shall be increased by the amount or amounts of expenditure relatable to the income as explained above.

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

A new Sec 115UB has been inserted to provide that the existing pass through mechanism contained in the provisions of Sec 10(23FB) and Sec 115U shall not apply to such investment fund to which the new regime provided in Sec 10(23FBA) and Sec 115UB applies.

Section 115UA: Taxation of business trusts

Sec 115UA provided that any income distributed by a business trust to its unit holders shall be taxable in hands of such unit holders in like manner and in the same proportion as if such income was received by, or accrued to, the business trust.

It is amended to provide that the distributed income (or any part thereof), received by a unit holder from the business trust, being a real estate investment trust (REIT), which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such business trust, shall also be deemed to be income of such unit holder and shall be charged to tax.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Section 151: Sanction for issue of notice

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

To bring simplicity, the above has been substituted to provide that no notice under section 148 shall be issued by an assessing officer upto four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the

Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
This amendment has been effective from 1st day of June, 2015.

Section 153C : Assessment of income of any other person

The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.
Disputes have arisen as to the interpretation of the words "belongs to" in respect of a document.
Accordingly, the aforesaid section has been amended to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that
(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,
any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.
This amendment has become effective from the 1st day of June, 2015.

Section 154: Rectification of mistake

A new clause (d) in sub-section (1) of the aforesaid section has been inserted so as to provide that an income-tax authority may amend an intimation issued under sub-section (1) of section 206CB.

In Sub-section (2),(3),(5),(6),(8) of the aforesaid section has been further amended to insert the reference of "collector" in addition to assessee or deductor. These amendments have become effective from 1st June, 2015.

Section 156: Notice of demand

The existing provisions contained in the proviso to the aforesaid section provide that where any sum is determined to be payable by the assessee or by the deductor under sub-section (1) of section 143 or sub-section (1) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.
The aforesaid proviso to section 156 has been amended to include that where any sum is determined to be payable by the assessee or the deductor or the collector under sub-section (1) of section 206CB, such intimation shall be deemed to be a notice of demand for the purposes of this section.
This amendment has become effective from 1st June, 2015.

Section 158AA: Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court

A new section 158AA has been inserted in the Act.
Sub-section (1) of the new section seeks to provide that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in

his case for another assessment year which is pending before the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution against the order of the High Court in favour of the assessee, he may, instead of directing the Assessing Officer to file appeal to the Appellate Tribunal, direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within sixty days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

Sub-section (2) of the new section, inter alia, seeks to provide that the Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application under subsection(1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in subsection(2) or sub section(2A) of section 253.

Sub-section (3) of the new section seeks to provide that where the order of the Commissioner (Appeals) referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order and, save as otherwise provided in this section, all other provisions of Part B of chapter XX shall apply accordingly.

Sub-section (4) of the new section seeks to provide that every appeal under sub-section (3) shall be filed within sixty days of the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal Commissioner.

This amendment has become effective from 1st June, 2015.

Section 111A: Tax on Short Term Capital Gain in case of transfer of units of a business trust acquired in consideration of the shares of a SPV

Existing second proviso to sub-section (1) of section 111A provided for non-applicability of provisions of section 111A on income arising from transfer of units of a business trust which were acquired by the assessee in consideration of a transfer of shares of a special purpose vehicle. This proviso came into effect from 01.04.2015.

The said proviso is omitted and therefore, after omission of the said proviso concessional rate of tax on short term capital gains provided in section 111A shall now be applicable to capital gains arising from transfer of units of a business trust which are acquired by the assessee in exchange of the shares of special purpose vehicle.

This amendment will take effect from 1st April, 2016.

Sec 194A - Deduction of tax on interest (other than interest on securities)

Under the existing provisions of sec 194A (3) (i), interest income for the purpose of deduction of tax by the banking company or the co-operative bank or the public company shall be computed with reference to a branch of these entities. A proviso to the said clause (i) is inserted to provide that the computation of interest income for the purpose of deduction of tax should be made with reference to such interest credited or paid by the banking company or the co-operative bank or the public company which has adopted core banking solutions.

Under the existing provisions of sec 194A (3) (v), an exemption is provided for deduction of tax in respect of interest payments by co-operative society to a member thereof or any other co-operative society. The said clause (v) of sec 194A (3) has been amended to provide that such exemption shall not apply to interest payments on time deposits by co-operative banks to its members. Further, an explanation is inserted after aforesaid clause (v) to provide meaning of "co-operative bank" as meaning assigned to it in Part V of the Banking Regulation Act, 1949.

The existing exemption provided under section 194A(3)(viia) of the Act from the deduction of tax from interest paid by a co-operative society to another co-operative society shall to continue to apply to the co-operative bank and, therefore,

a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.
Under the existing provisions of sec 194A (3) (ix), an exemption is provided for deduction of tax on income credited or paid by way of interest on the compensation amount awarded by Motor Accidents Claims Tribunal if the amount of such interest income during the financial year does not exceed Rs. 50,000. The said clause (ix) has been amended to provide that exemption is provided for such income credited and further inserted clause (ixa) to provide for exemption on such amount paid only at the time of payment if it does not exceed Rs. 50,000 during the financial year.
Under existing Explanation 1 below clause (xi), the definition of "time deposits" excludes recurring deposits. The definition of "time deposits" has been amended so as include recurring deposits.
The amendments have become effective from 1st June, 2015.

Sec 194C - Deduction of tax from payments made to transporters
Under the existing provisions of sub-sec (6) of sec 194C, exemption is provided for deduction of tax from payments made to the contractors during the course of plying, hiring and leasing goods carriage if the Contractor furnish his Permanent Account Number (PAN)
The said section has been amended to expressly provide that the relaxation shall be applicable to payments made to contractors who own ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with their PAN.
The amendment has become effective from 1st June, 2015.

Sec 194I - Deduction of tax on rent
A third proviso to section 194I has been inserted to provide that no deduction of tax shall be made from payment of rent credited or paid to a business trust, being a real estate investment trust (REIT), in respect of any real estate asset, owned by such REIT.
The amendment has become effective from 1st June, 2015.

Sec 194LBA - Deduction of tax on income from units of a business trust
Under the existing provisions of sec 194LBA (1), tax is required to be deducted on any distributed income by a business trust to its unit holder, being a resident. The aforesaid section has been amended by inserting any distributed income of REIT by way of renting, leasing or letting out of asset.
A new sec 194LBA(3) has been inserted to provide for deduction of tax on any distributed income by REIT to its unit holders being a non- resident (not being a company), or a foreign company at the rates in force.
The amendments has become effective from 1st June, 2015.

Sec 194LBB - Deduction of tax on income in respect of units of an investment fund
A new sec 194LBB has been inserted to provide for deduction of tax on any income, other than that proportion of income which is of the same nature referred to in newly inserted sec 10 (23FBB), payable to a unit holder in respect of units of investment fund specified in clause (a) of Explanation 1 to sec 115UB at the rate of 10 per cent.
The amendment has become effective from 1st June, 2015.

Sec 194 LD - Deduction of tax on income by way of interest on certain bonds and Government securities
Under existing provisions of sec 194LD(2), the interest income was eligible for lower withholding tax of 5 per cent as provided in sec 194LD (1) for interest payable on or after 1st June 2013 but before 1st June 2015.
Section 194LD(2) has been amended to provide for concessional tax rate of 5 per cent on such interest payable upto 30th June 2017, thereby extending benefits of concessional rate for two more years.
The amendment has become effective from 1st June, 2015.

Sec 200 - Duty of the person deducting tax

Under existing provisions of sec 200(1), the person deducting taxes under Chapter XVII shall pay the same within the prescribe time. Further, under existing provisions of sec 200 (2), the employer referred in sec 192 (1A) shall pay the taxes deducted to the credit of the Central Government or as the Board directs.

A new sec 200(2A) has been inserted to provide that where such taxes has been paid without production of a challan, the person responsible for crediting such taxes to the credit of the Government, shall deliver a statement to the income tax authority in the prescribed form.

The amendment has become effective from 1st June, 2015.

Sec 200A- Processing of statements of tax deducted at source (TDS)

Under existing provisions of sec 200A(1), the statement of TDS or a correction statement made under section 200 shall be processed in the manner specified therein.

Section 200A (1) has been amended to provide that such aforesaid statement of TDS or correction statement shall be processed and sum deductible under Chapter XVII shall be computed after also taking into account fees for default in furnishing the statements, if any, payable in accordance with the provisions of sec 234E. Further, the sum payable or refundable shall be determined after adjusting the aforesaid computed sum against any amount paid under sec 200 or sec 201 or sec 234E and any amount paid otherwise by way of tax or interest or fee.

The amendment has become effctive from 1st June, 2015.

Sec 203A- Tax deduction and collection account number

Under existing provisions of sec 203A, every person deducting or collecting tax who has not been allotted "Tax deduction account number" or "Tax collection account number" is required to apply for the same and quote the same in challans, certificates, returns etc.

A new sec 203A (3) has been inserted to provide that such provisions shall not apply to a person notified by the Central government in this behalf.

The amendment has become effective from 1st June, 2015.

Sec 206C- Profit and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc

Under existing provisions of sec 206C (3), the person collecting the taxes shall pay the same within prescribed time to the credit of the Central Government or as the Board directs.

A new sec 206C (3A) has been inserted to provide that where such taxes collected as per sub sec (1) or (1C) or (1D) has been paid without production of a challan, the person responsible for crediting such taxes to the credit of the Government, shall deliver a statement to the income tax authority in the prescribed form.

Further, Sub section (3B) has also been inserted to provide that such responsible person for collection of taxes may also deliver a correction statement for rectification of mistakes to the prescribed authority in the prescribed form.

The amendments has become effective from 1st June, 2015.

Sec 206CB- Processing of statements of tax collected at source

A new sec 206CB has been inserted to provide that statement of tax collection at source or correction statement under section 206C shall be processed in the manner specified therein.

The amendment has become effective from 1st June, 2015.

Section 220: The collection and recovery of tax

Sub-section 2C to Sec 220 has been inserted which deals with the collection and recovery of tax so as to provide that when the person responsible for collecting tax on profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc. has paid simple interest at 1% as per section 206C due to the failure to

collect tax or after collection non-payment of the same then no interest u/s 220(2) will be levied on the person on whose account tax has been collected at source.
The amendment has become effective from 1st June 2015.

Section 246 A – Appealable orders before Commissioner Appeals

As per the existing provisions of section 246A(1), the orders passed by the assessing officer are appealable before Commissioner Appeals by any assessee or any deductor.
It is amended to include the reference 'or any collector' in addition to any assessee or any deductor. Further, it is also amended that the orders passed under section 206CB(1), a new provision for processing of statements of tax collected at source, shall also be appealable before Commissioner Appeals.
This amendment has become effective from 1st June, 2015.

Section 253 – Appeals to the Appellate Tribunal

A new clause (f) to section 253(1) has been inserted, wherein an order passed by the prescribed authority under section 10(23C)(vi) or (via) shall now be appealable by any assessee before the Appellate Tribunal.
This amendment has become effective from 1st June 2015.

Section 255 – Procedure for Appellate Tribunal

The existing provision of section 255 provide that the President or any other member of Appellate Tribunal authorized by Central Government can dispose off any case, sitting singly, where total income of an assessee computed by the Assessing Officer does not exceed Rs. 5 lakh.
It is amended that the President or any other member can now dispose off any case, sitting singly, where total income of an assessee computed by the Assessing Officer does not exceed Rs. 15 lakh.
This amendment has become effective from 1st June 2015.

Section 263 – Revision of orders prejudicial to revenue

It is amended to insert Explanation 2 to this section wherein the orders passed by the Assessing officer shall be deemed to be erroneous if in the opinion of the Commissioner –

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

This amendment will become effective from 1st June 2015.

Section 269SS – Mode of taking or accepting certain loans, deposits and specified sum

The existing provisions of section 269SS provides that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the said section, if the amount of such loan or deposit is twenty thousand rupees or more.
It is amended to include the reference to 'any specified sum' in addition to loan or deposit. The term 'specified sum' is proposed to define as any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer materialises. Further, it is also amended that the provisions of this section shall not apply where the person giving the loan, deposit or specified sum and the person accepting it, both have agricultural income and neither of them have any income chargeable to tax under the Act.
This amendment has become effective from 1st June, 2015.

Section 269T – Mode of repayment of certain loans or deposit

The existing provision contained in section 269T provides that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the said section, if the amount of such loan or deposit is twenty thousand rupees or more.

It is amended to include the reference to 'or any specified advance received by it' in addition to loan or deposit. The term 'specified advance' is amended to be defined as any sum of money received, as an advance or otherwise, in relation to transfer of an immovable property and becomes repayable if the negotiations do not result in transfer of such immovable property.

This amendment has become effective from 1st June, 2015.

Section 234B: Interest for default in payment of advance tax in cases where application has been made to Settlement Commission

It is amended to insert sub-section 2A under Section 234B relating to interest for defaults in payment of advance tax to provide that when application before settlement commission has been made, then the assessee shall pay simple interest at the rate of 1 percent on income tax which is contested before settlement commission commencing from 1st April of the relevant assessment year till the filing of application before settlement commission.

Further, it is also amended that when application before settlement commission has been made and the commission increases the income of the assessee, then the assessee shall pay simple interest at the rate of 1 per cent of tax on differential income between the total income determined by Settlement Commission and income as disclosed in the application before the Settlement Commission commencing from 1st April till the date of order of Settlement Commission.

Similarly, sub-section (3) has also been amended to provide that as result of an order of reassessment/re-computation under section 147 or 153A, interest shall be levied from the 1st day of April of the assessment year till the date of the reassessment/re-computation under section 147 or 153A on the resultant shortfall in payment of advance tax.

The amendment has become effective from 1st June 2015.

Section 285A: Furnishing of information or documents in respect of companies incorporated outside India deriving value substantially from assets located in India

It is amended to insert section 285A to provide that foreign companies, whose share/interest derive value substantially from the assets located in India as referred to in Explanation 5 to clause (i) of sec 9(1) and such company holds directly/indirectly such assets in India through or in an Indian concern, then such Indian company shall furnish within prescribed period the information or documents to the prescribed income tax authority for the purposes of determination of any income accruing or arising in India under clause (i) of sub section (1) of section 9.

The amendment will take effect from 1st April 2016 and will accordingly apply in relation to the assessment year 2016-17 and subsequent assessment years.

Section 288: Clarification on who is Accountant to act as authorised representative for appearance

The provision of Act contains several provisions (e.g. section 44AB, section 80-IA, section 92E, section 115JB, etc.) which mandate the taxpayers to furnish audit reports and certificates issued by an 'accountant' for ensuring correct reporting/computation of taxable income by the tax payers. Explanation below section 288(2) of the Act defines an 'accountant' as a chartered accountant within the meaning of Chartered Accountants Act, 1949 (including a person eligible to be appointed as auditor under section 226(2) of the Companies Act, 1956, of the companies registered under any State).

Section 288 of the Act has been amended to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of

the Act in respect of that company. However, it is amended to provide that the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in sub-section (1) of section 288 of the Act as authorised representative on behalf of that assessee.
It is further amended to provide that the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association, or the member of Hindu undivided family who is convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.
These amendments have become effective from 1stJune, 2015.

Section 295: Tax relief or deduction of income tax paid in foreign country has been included in Power of CBDT to make rules
The existing provisions contained in sub-section (1) of the section 295 provide that the CBDT may make rules for the whole or any part of India for carrying out the purposes of the Income Tax Act. Sub-section (2) of section 295 specifies the matters in respect of which such rules may be provided.
It is amended to insert clause (ha) to subsection (2) of Sec 295 to provide the procedure for granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under the Act.
The amendment has become effective from 1st June 2015.

PENALTIES

Section 271: Amount of tax sought to be evaded for the purposes of penalty for concealment of income
Under the existing provision contained in clause (c) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is levied on the "amount of tax sought to be evaded", which has been defined, inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income.
In recent times, courts have held that penalty under section clause (c) of sub-section (1) of section 271 cannot be levied in cases where the concealment of income occurs under the income computed under general provisions and the tax is paid under the provisions of section 115JB or 115JC of the Act.
Now, Section 271 of the Act has been amended so as to provide that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of section 115JB or 115JC. Further, in a case where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored.
This amendment will take effect from 1st April, 2016 and will accordingly apply, in relation to the assessment year 2016-17 and subsequent assessment years.

Section 271D & 271E: Penalty for dealing in cash in relation to transfer of immovable property
In order to curb generation of black money, it is amended to bring in transactions in the nature of advance or otherwise in relation to immovable property in cash under the ambit of sec. 269SS and 269T. Now it is amended that no person shall accept or repay any sum of money in cash in excess of rupees twenty thousand in relation to transfer of immovable property either as advance or otherwise. Consequently, the scope of section 271D and 271E is amended to be widened to include these transactions in relation to immovable property. Accordingly, assessee shall be liable to pay, by way of penalty, a sum equal to the amount of such cash transactions.

These amendments have become effective from 1st June, 2015.

Section 271FAB: Penalty for failure to furnish statement or information or document by eligible offshore investment fund

In order to facilitate location of fund managers of off-shore funds in India a specific regime has been amended in the Act in line with international best practices by introducing new section 9A.

It is further amended that every eligible investment fund shall, in respect of its activities in a financial year, furnish within ninety days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority containing information relating to the fulfillment of conditions under section 9A or any information or document which may be prescribed.

To ensure compliance with above provision, Section 271FAB is amended to provide a penalty of rupees five lacs for non-furnishing of the prescribed information or document or statement,

This provision will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Section 271GA: Penalty for failure to furnish information or document under section 285A

A new section 285A has been introduced providing for reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company or the entity. The Indian entity shall be obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity.

To ensure the above information or documents are furnished in time bound manner, a new section 271GA has been introduced to provide for penalty for any failure on the part of Indian concern. The introduced penalty shall be-

(a) a sum equal to two percent of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and

(b) a sum of five hundred thousand rupees in any other case.

This section will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Section 271-I: Penalty for failure to furnish information or furnishing inaccurate information under section 195

Section 195(6) has been amended to provide that information related to all the remittances to non-resident whether chargeable to tax or not shall be furnished in the manner as may be prescribed.

Currently, there is no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident. For ensuring submission of accurate information in respect of remittance to non-resident, a new provision in the Act has been inserted to provide that in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195(6) of the Act, a penalty of one lakh rupees shall be levied.

This section has become effective from 1st June 2015.

Section 272A: Penalty for failure to furnish prescribed statement by Government deductor

Under the existing scheme of payment of TDS and TCS, Government deductors/collectors are allowed to make payment of tax deducted/collected by them without production of challan i.e. through book entry. In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, the provisions of sections 200 and 206C of the Act has been amended to provide that where the tax deducted [including paid under section 192(1A)] / collected has been paid without the production of a challan, the PAO/ TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within

the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorized by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars.
To ensure compliance of this amended obligation of filing statement, the provisions of section 272A of the Act has been amended so as to provide for a penalty of Rs.100/- for each day of default during which the default continues subject to the limit of the amount deductible or collectible in respect of which the statement is to be furnished of tax deducted/collected by them without production of challan i.e. through book entry.
This amendment has become effective from 1st June, 2015.

WEALTH TAX

Section 3 of the Wealth Tax Act, 1957: Abolition of Wealth tax w.e.f 1st April 2016
The existing provisions contained in sub-section (2) of Section 3 of the Wealth Tax Act, 1957 provides that wealth-tax in respect of net wealth of every individual, Hindu undivided family and company is charged at the rate of one per cent of the amount of taxable net wealth for the assessment year commencing on 1st day of April, 1993 and subsequent assessment years.
Sub-section (2) has been amended so as to provide that wealth-tax shall not be charged in respect of assessment year commencing on or after 1st day of April, 2016.Wealth-tax is amended to be replaced with additional surcharge of 2 per cent on super rich with a taxable income of over 1 crore annually.
This amendment will take effect from 1stApril, 2016.

FINANCIAL REPORTING AND AUDITING

IMPLEMENTATION OF INTERNATIONAL FINANCIAL REPORTING STANDARD (IFRS)

The convergence of accounting standards towards IFRS is gaining momentum across the globe. Accounting bodies such as the International Accounting Standards Board (ASB) and the US Financial Accounting Standards Board (FASB) have already initiated the groundwork on converging International Financial Reporting Standards (IFRS) and Generally Accepted Accounting Standards (GAAP). The boards for standards the world over have set their own timetable for adapting IFRS and more and more countries have agreed to adopt the new standards as their national accounting standards in the future. Internationally, in so far as cross-border investments are concerned, a non-IFRS compliant country is perceived as an additional risk factor.

Ind AS (the converged IFRS standards) in India may significantly affect a company's day-to-day operations and may even impact the reported profitability of the business itself. Conversion brings a one-time opportunity to comprehensively reassess financial reporting.

On 2 January 2015, the Press Information Bureau, Government of India, Ministry of Corporate Affairs (MCA) issued a note outlining the various phases in which Indian Accounting Standards converged with IFRS (Ind AS) is proposed to be implemented in India, for Companies other than Banking Companies, Insurance Companies and NBFCs.

Need for IFRS

Level of Confidence: The key benefit will be a common accounting system that is perceived as stable, transparent, and fair to investors across the world, whether local or foreign.

Risk Evaluation: IFRS will eliminate barriers to cross-border listings and will be beneficial for investors who generally ascribe a risk premium if the underlying financial information is not prepared in accordance with international standards.

Merger & Takeover Activity: Cross-border mergers and acquisitions will get a boost by making it easier for the parties involved in as far as redrawing the financial statements is concerned.

Investments: Foreign investors will be attracted to economies where IFRS-compliant financial statements are the norm.

Roadmap for convergence with IFRS

The Ministry of Company Affairs released a press release stating the roadmap for achieving convergence of Indian Accounting Standards with IFRS. According to the press release there will be two separate sets of Accounting Standards under section 211(3C) of the Companies Act, 1956.

First set would comprise of the Indian Accounting Standards which are converged with the IFRSs which shall be applicable to the specified class of companies. The second set would comprise of the existing Indian Accounting Standards and would be applicable to other companies, including Small and Medium Companies (SMCs).

The first set of Accounting Standards (i.e. converged accounting standards) will be applied to specified class of companies in phases.

Voluntary Adoption

Companies can voluntarily adopt Ind AS for accounting periods beginning on or after 1 April 2015 with comparatives for period ending 31 March 2015 or thereafter. However, once they have chosen this path, they cannot switch back.

Mandatory Applicability

(a) Phase-I

Ind AS will be mandatorily applicable to the following companies for periods beginning on or after **1 April 2016**, with comparatives for the period ending **31 March 2016** or thereafter:

- Companies whose equity and/or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth of 500 crore INR or more.
- Companies having net worth of 500 crore INR or more other than those covered above.
- Holding, subsidiary, joint venture or associate companies of companies covered above.

(b) Phase-II

Companies to which Indian Accounting Standards (Ind AS) are applicable shall prepare their first set of consolidated financial statements in accordance with the Indian Accounting Standards (Ind AS) effective at the end of its first Ind AS reporting period unless otherwise specified, i.e., companies preparing consolidated financial statements for the accounting period beginning on or after April 1, 2016 shall be required to apply the Ind AS effective for financial year ending on 31st March 2017

Ind AS will be mandatorily applicable to the following companies for periods beginning on or after **1 April 2017**, with comparatives for the period ending **31 March 2017** or thereafter:

a. Companies whose equity and/or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees 500 Crore.
b. Unlisted companies other than those covered in Phase I and Phase II whose net worth are more than 250 crore INR but less than 500 crore INR.
c. Holding, subsidiary, joint venture or associate companies of above companies.

Foreign operations

- It is a relief that an overseas subsidiary, associate or joint venture of an Indian company is not required to prepare its stand-alone financial statements as per the Ind AS, and instead, may continue with its jurisdictional requirements. However, these entities will still have to report their Ind AS adjusted numbers for their Indian parent company to prepare consolidated Ind AS accounts.

Applicability to insurance, banking and non-banking financial companies

- Insurance, banking and non-banking financial companies shall not be required to apply Ind AS either voluntarily or mandatorily. However, it appears (though not clarified), that if these entities are subsidiaries, joint venture or associates of a parent company covered by the roadmap, they will have to report Ind AS adjusted numbers for the parent company to prepare consolidated Ind AS accounts.

Early adoption of standards

- The debate on two of the most significant standards, revenue recognition and financial instruments has now been settled with them being notified. Interestingly, India will be one of the first countries to mandatorily adopt these standards from 1 April 2015 while the rest of the world will follow from 2017. These two standards will have a significant effect on entities, impacting not only their financial results but also catalysing numerous organisational and business changes.

Others

- There was hope that companies will be given an option to prepare their financial statements as per IFRS issued by the IASB (the true IFRS), which has been now ruled out.
- The rules specify that in case of conflict between Ind AS and a law, the provisions of the law shall prevail and the financial statements shall be prepared in conformity with it.

With IFRS set to become the future Indian GAAP and IFRS being a moving target, Indian companies should actively monitor and participate in the IASB's standard setting process.

(c) Phase-III

Listed companies which have a net worth of Rs. 500 crores or less will convert their opening balance sheet as at 1st April, 2014, if the financial year commences on or after 1st April, 2014, whichever is later, in compliance with the notified accounting standards which are convergent with IFRS.

When the accounting year ends on a date other than 31st March, the conversion of the opening Balance Sheet will be made in relation to the first Balance Sheet which is made on a date after 31st March.

Companies which fall in the following categories will not be required to follow the notified accounting standards which are converged with the IFRS (though they may voluntarily opt to do so) but need to follow only the notified accounting standards which are not converged with the IFRS. These companies are: -

1. Non-listed companies which have a net worth of Rs. 500 crores or less and whose shares or other securities are not listed on Stock Exchanges outside India.
2. Small and Medium Companies (SMCs).

Separate roadmap for banking and insurance companies was submitted in consultation with the concerned regulators. The roadmap is as under:-

1. Insurance companies:-
   All insurance companies will convert their opening balance sheets with IFRS from 1st April, 2012 in compliance with the converged Indian Accounting Standards.
2. Banking companies:-
   (i) All scheduled commercial banks and those urban co-operative banks (UCBs) which have a net worth in excess of Rs. 300 crores will convert their opening balance sheet as at 1st April, 2013 in compliance with the first set of Accounting Standards (i.e. the converged Indian Accounting Standards).

   (ii) Urban co-operative banks which have a net worth in excess of Rs. 200 crores but not exceeding Rs. 300 crores will convert their opening balance sheets as at 1st April, 2014 in compliance with the first set of Accounting Standards (i.e. the converged Indian Accounting Standards).

(iii) Urban co-operative banks which have a net worth not exceeding Rs. 200 crores and Regional Rural banks (RRBs) will not be required to apply the first set of Accounting Standards i.e. the converged Indian Accounting Standards (though they may voluntarily opt to do so) and need to follow only the existing notified Indian Accounting Standards which are not converged with IFRSs.

3. Non-Banking Financial companies

(i) The following categories of non-banking financial companies (NBFCs) will convert their opening balance sheet as at 1st April, 2013 if the financial year commences on 1st April (or if the financial year commences on any other date, then on the date immediately following 1st April, 2013) in compliance with the first set of Accounting Standards (i.e the converged Indian Accounting Standards).

These NBFCs are:-

- Companies which are part of NSE – Nifty 50
- Companies which are part of BSE - Sensex 30
- Companies, whether listed or not, which have a net worth in excess of Rs.1,000 crores.

(ii) All listed NBFCs and those unlisted NBFCs which do not fall in the above categories and which have a net worth in excess of Rs. 500 crores will convert their opening balance sheet as at 1st April 2014 if the financial year commences on 1st April (or if the financial year commences on any other date, then on that date following 1st April 2014) in compliance with the first set of Accounting standards (i.e converged Indian Accounting Standards).

(iii) Unlisted NBFCs which have a net worth of Rs. 500 crores or less will not be required to follow the first set of accounting standards (i.e the converged Indian accounting standards), though they may voluntarily opt to do so, but need to follow only the notified Indian accounting standards which are not converged with the IFRSs.

SOURCES OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP)

Companies in India follow fundamental accounting principles and practices. The Accounting Standards Board of the Institute of Chartered Accountants of India (ICAI) issues Accounting Standards to be followed by enterprises. All Accounting Standards issued to date are mandatory and companies are required to comply with these standards (the applicability of these standards varies on the listing status of the companies, their turnover, etc.) and disclose significant accounting policies in the preparation of their financial statements. ICAI also issues Guidance Notes and Auditing and Assurance Standards, which are designed primarily to guide auditors on matters that may result during the course of their professional work. ICAI issues Expert Advisory Committee Opinions, which suggest the accounting and auditing treatments applicable to specific issues. ICAI also issues Accounting Standard Interpretations (ASIs) which interpret the accounting standards.

STATUTES / BODIES GOVERNING THE REPORTING REQUIREMENTS

The ICAI of India, National Advisory Committee on Accounting Standards (NACAS), Securities Exchange Board of India (SEBI), the Companies Act, 2013 and the Income Tax Act, 1961, primarily govern the financial reporting requirements of companies in India. Further Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority (IRDA) has regulatory powers for banking and financial companies and for insurance companies respectively. In addition, the central government, through special acts and orders, also governs the financial reporting requirements.

ACCOUNTING STANDARDS

The Institute of Chartered Accountants of India has endeavored to integrate in International Accounting Standard to the extent possible with the conditions and practices prevailing in India and has accordingly been formulating accounting standards applicable in India. However, it may be noted that there are still several differences between Indian Accounting Standard and International

Accounting Standard [now renamed International Financial Reporting Standards (IFRS)]. The applicability of Accounting Standard to an Enterprise depends upon the level under which a particular enterprise may fall. The ICAI have classified enterprises into three main categories viz. Level I, Level II and Level III. However, the criteria for classification of enterprise may require a detail study. For the sake of brevity, the same has not been produced here. The Accounting Standards issued by ICAI are listed below:

AS 1	Disclosure of Accounting Policies	AS 16	Borrowing Costs
As 2	Valuation of Inventories	As 17	Segment Reporting
AS 3	Cash Flow Statements	As 18	Related Party Disclosures
AS 4	Contingencies and Events occurring after the Balance Sheet Date	As 19	Leases
AS 5	Net Profit or Loss for the period, prior period items and changes in Accounting Policies	AS 20	Earnings per share
AS 6	Depreciation Accounting	As 21	Consolidated Financial Statements
AS 7	Construction Contracts	As 22	Accounting for Taxes on Income
AS 8	Accounting for Research and Development (this AS stands withdrawn from the date AS 26 becomes mandatory)	AS 24	Discontinuing Operations
AS 9	Revenue Recognition	AS 25	Discontinuing Operations
As 10	Accounting for Fixed Assets	AS 26	Intangible Assets
AS 11	The effects for changes in Foreign Exchange Rates	AS 27	Financial Reporting of Interests in Joint Ventures
AS 12	Accounting for Government Grants	AS 28	Impairment of Assets
AS 13	Accounting for Investments	AS 29	Provisions, Contingent Liabilities and Contingent Assets
As 14	Accounting for Amalgamations	AS 30	Financial Instruments: Recognition and Measurement and Limited Revisions to AS 2, AS 11 (revised 2003), AS 21, AS 23, AS 26, AS 27, AS28 and AS 29
AS 15	Employee Benefits	AS 31	Financial Instruments: Presentation
AS 23	Accounting for Investments in Associates in Consolidated Financial Statements	AS 32	Financial instruments: Disclosures and limited revision to AS 19, Lease

Apart from the Accounting Standard as stated above, the Institute of Chartered Accountants of India has been issuing interpretations (Accounting Standard Interpretations commonly known as ASI) on certain matters in the context of

Accounting Standard or connected with Accounting Standard issues. As of July 2010, the Institute of Chartered Accountants of India has issued 29 ASIs.

GUIDANCE NOTES

The Council of ICAI and its Committee issue, from time to time, guidance notes on various areas. It has been clarified that the guidance notes are recommendatory in nature since they are primarily designed to provide guidance to members of the Institute of Chartered Accountants of India on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that, in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary.

AUDITING, REVIEW AND OTHER STANDARDS (FORMERLY KNOWN AS AAS)

The Institute of Chartered Accountants of India has issued series of Auditing, Review and Other Standards (formerly known as AAS) which an auditor needs to follow and assure its applicability while executing and auditing assignment. Till date, 37 Auditing, Review and Other Standards have been issued. It has been clarified by the ICAI that Auditing, Review and Other Standards have been issued "with a view to securing compliance by members on matters which in the opinion of the Council of the Institute are critical for the proper discharge of their functions." Auditing, Review and Other Standards are, therefore, mandatory in nature. The list of Auditing, Review and Other Standards is given below:

SQC 1	Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements	520(Revised)	Analytical Procedures
200(Revised)	Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing	530(Revised)	Audit Sampling
210(Revised)	Agreeing the Terms of Audit Engagements	540(Revised)	Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures
220(Revised)	Quality Control for an Audit of Financial Statements	550(Revised)	Related Parties

230(Revised)	Audit Documentation	560(Revised)	Subsequent Events
240(Revised)	The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements4	570(Revised)	Going Concern
250(Revised)	The Auditor's Responsibilities Relating to Laws and Regulation in an Audit of Financial Statements	580(Revised)	Written Representations
260(Revised)	Communication with Those Charged with Governance	600	Special Considerations — Audits of Group Financial Statements (Including the Work of Component Auditors)
265	Communicating Deficiencies in Internal Control to Those Charged with Governance and Management	610(Revised)	Using the Work of Internal Auditors
300(Revised)	Planning an Audit of Financial Statements	620(Revised)	Using the Work of an Auditor's Expert
315	Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment	700(Revised)	Forming an Opinion and Reporting on Financial Statements
320(Revised)	Materiality in Planning and Performing an Audit	705	Modifications to the Opinion in the Independent Auditor's Report
330	The Auditor's Responses to Assessed Risks	706	Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report
402(Revised)	Audit Considerations Relating to an Entity Using a Service	710(Revised)	Comparative Information – Corresponding Figures and Comparative

	Organisation		Financial Statements
450	Evaluation of Misstatements Identified during the Audit	720	The Auditor's Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements
500(Revised)	Audit Evidence	800	Special Considerations-Audits of Financial Statements Prepared in Accordance with Special Purpose Framework
501(Revised)	Audit Evidence - Specific Considerations for Selected Items	805	Special Considerations-Audits of Single Purpose Financial Statements and Specific Elements, Accounts or Items of a Financial Statement
505(Revised)	External Confirmations	810	Engagements to Report on Summary Financial Statements
510(Revised)	Initial Audit Engagements—Opening Balances	SAE 3400	The examination of prospective financial information
SAE 3402	Assurance reports on control at service organisation	SRS 4410	Engagement to compile financial information
SRS 4400	Engagement to perform agreed upon procedures regarding financial information		

Indian GAAP	IAS/IFRS	US GAAP
Changes in Accounting Policy		
Any change in an accounting policy, which has a material effect, should be disclosed. The impact of, and the adjustments resulting from, such change, if material, should be shown in the financial statements of the period in which such change is made, to reflect the effect of such change. Where the effect of such change is not ascertainable, wholly or in part, the fact should be indicated. If a change is made in the accounting policies which has no material effect on the financial statements for the current period but which is reasonably expected to have a material effect in later periods, the fact of such change should be appropriately disclosed in the period in which the change is adopted. Policy changes made on the adoption of a new standard must be accounted for in accordance with that standard's transition provisions.	Changes in accounting policy should be accounted for retrospectively, with comparative information restated and the amount of the adjustment relating to prior periods adjusted against the opening balance of retained earnings of the earliest year presented. An exemption applies when it is impracticable to change comparative information. Policy changes made on the adoption of a new standard must be accounted for in accordance with that standard's transition provisions. If transition provisions are not specified, the method described above must be used.	Requires recognition and disclosure of the cumulative amount of the change in the income statement for the period of the change. The entity discloses pro-forma comparatives as if the change had been applied to those periods. However, retrospective adjustments are required in certain cases. Unlike IFRS, US GAAP treats a change in the depreciation method for previously recorded assets as a change in accounting principle.
Retirement benefits		
The liability for defined benefit plan is acturially determined. Several alternative methodologies are considered acceptable for the purposes of valuation and the actuary has discretion over selection of the assumptions.	The liability for defined benefit plan is reported at the present value of future benefits using the projected unit cost method, with a stipulated method to determine assumptions. Actuarial gains and losses arising on periodic valuation of liability would need to be recognized based on certain criteria. As a minimum, amortization of an unrecognized net gain or loss shall be included as a	Similar to IFRS except that immediate recognition of actuarial gains or losses immediately is not permitted.

Indian GAAP	IAS/IFRS	US GAAP
Compensated absences, Leave encashment or vacation accrual is viewed as retirement benefit and is reported based on actuarial valuation.	component of employee cost for a year if, as of the beginning of the year, that unrecognized net gain or loss exceeds 10 percent of the projected benefit obligation. Actuarial gains or losses are amortized based on the expected average remaining working lives of the employees. Other systematic method such as immediate recognition of all gains and losses is also permitted. Compensated absences outstanding at the balance sheet date are reported as liability and are priced at the salary rate prevalent on the balance sheet date.	Similar to IFRS.
Revaluation of Fixed Assets		
Fixed assets are stated at historical cost or revalued amount less accumulated depreciation and accumulated impairment losses. If the carrying amount is increased as a result of revaluation, the increase is credited directly to equity under heading Revaluation Reserve. However, the increase shall be credited in the income statement to the extent that it reverses a revaluation decrease of the same asset previously recognized in the income statement. If an asset's carrying amount is decreased as a result of revaluation, the decrease is recognized in the income statement. However, the decrease is directly debited to equity under the heading	An entity that elects to revalue an item of property, plant and equipment, the entire class of property, plant and equipment to which the asset belongs should be revalued. Revaluation shall be made at sufficient regularity to ensure that the carrying amount does not defer materially from that which would be determined using the fair value at the balance sheet date. Recognition of an increase or decrease in revaluation is similar to Indian GAAP.	No upward revaluation of any class of fixed assets is permitted.
Purchase Incentives		
The assets that are received free of cost in connection with the purchase of other assets are carried at nil value.	Similar to Indian GAAP.	Credits issued by vendors for e.g. aircraft manufacturers, which can be used for purchase of spare parts, or other equipment can be

Indian GAAP	IAS/IFRS	US GAAP
		applied as reduction of purchase price of the aircraft or amortized over the life of the related aircraft.
Foreign Exchange Differences		
Foreign exchange difference relating to acquisition of fixed assets is adjusted to the carrying cost of such assets. Other foreign exchange differences are recognized in the the statement of profit and loss. Premium or discount on forward exchange contracts is amortized and recognized in the income statement over the period of such contract, except in respect of contracts relating to liabilities for purchase of fixed assets where the amortization is adjusted to the carrying value of the fixed assets.	All gains or losses arising out of foreign exchange differences are required to be included in the determination of net income, unless these differences are regarded as an adjustment to interest costs, which are eligible for capitalization as borrowing costs on fixed assets.	Exchange differences relating to monetary assets and liabilities are recorded through the income statement and those on all non-monetary assets are not recorded.
Borrowing Costs		
Borrowing costs attributable to the acquisition or construction of a qualifying asset is capitalized as part of the cost of the asset. Other borrowing costs are recognized as an expense in the period in which they are incurred. Costs considered include interest, and other upfront fees paid in connection with the arrangement of funds	Borrowing costs are recognized as an expense in the period in which they are incurred and should be calculated using an effective interest-rate method. Borrowing costs include the amortization of transaction costs included in the initial arrangement of borrowings. An acceptable alternative is to capitalize those borrowing costs attributable to the acquisition, construction or production of an asset.	Interest cost is capitalized as part of the cost of an asset that is constructed or produced for an entity's own use. The capitalization period begins when activities to ready the asset for its use commences and ends when the asset is ready for use.
Depreciation on fixed Assets		
The Company generally provides for depreciation using the written down value method as per rates prescribed in schedule XIV of the Companies Act 1956. These are the minimum rates and companies are permitted to charge depreciation at	The depreciable amount of an item of property, plant and equipment are allocated on a systematic basis over its useful life.	Depreciation is provided on a systematic and rational manner over the estimated useful economic life of the asset.

Indian GAAP	IAS/IFRS	US GAAP
higher rates in order to write-off the cost of the assets over their useful lives, if shorter		
Inventories		
Under Indian GAAP inventories are carried at the lower of cost or net realizable value ("NRV") and include aircraft rotables, galley equipment and tooling. In respect of reusable items such as rotables, galley equipment and tooling NRV takes into consideration provision for obsolescence and wear & tear based on the estimated useful life of the aircraft derived from Schedule XIV to the Companies Act, 1956	Similar to US GAAP.	Rotables and assemblies of significant values & other nonexpendable parts are classified along with flight equipment as fixed assets & depreciated over the estimated useful life
Derivative Contracts		
Gain or Loss on derivative contracts entered into to hedge exposures to interest rate fluctuations are recognized as and when the underlying transactions are settled. Accordingly proportionate amounts are accrued / provided for the period between the last settlement date and year-end	Similar to US GAAP.	The FASB issued SFAS No.137, "Accounting for Derivative Instruments and Hedging Activities- Deferral of the Effective Date of FASB Statement No.133, which amends SFAS No.133, "Accounting for Derivatives Instruments and Hedging Activities", with effect from April 1, 2001. SFAS No.133 establishes accounting and reporting standards for derivative instruments and hedging activities, including certain derivative instruments embedded in other contracts, and requires that an entity recognizes all derivatives as assets or liabilities in the balance sheet and measure them at fair values, with changes in fair values being recognized in earnings, unless it qualifies the criterion of an effective hedge, as defined in SFAS No.133, in which case the changes in fair value is recognized as other comprehensive income in under

Indian GAAP	IAS/IFRS	US GAAP
		shareholders' equity. The gain or loss on derivative financial instruments that is designated and effective as hedges are generally recognized in earnings in the same period as the corresponding gain or loss on the underlying transaction being hedged. In a fair value hedge, a derivative instrument is marked to its fair value currently through earnings with an offsetting partial mark-to-fair-value of the hedged item (for the risk being hedged) currently through earnings. In a cash flow hedge, a derivative instrument is first marked to its fair value with the effective portion of the gain or loss reported initially in comprehensive income (equity) and the ineffective portion reported currently in earnings. The gain or loss on the derivative instrument is reclassified from equity into earnings in the same period as the loss or gain on the hedged cash flow.
Investments		
Investments are classified at current or long term. Current Investments are carried at lower of cost and quoted / fair value. Long-term investments are stated at cost. Provision for diminishing in the value of long-term investments is made only if such decline is other than temporary in the opinion of the management.	Investments are classified as trading, held-to-maturity or available-for sale. Investments acquired principally for the purposes of generating profits from short-term price fluctuations or dealers' margins are classified as trading. Held-to-maturity investments are investments with fixed or determinable payments and fixed maturity together with the entity's intent and ability to hold till maturity. Available-for-sale	Similar to IFRS except that changes in fair value of available-for-sale investments are recognized as other comprehensive income under shareholders' equity and other than temporary impairment of available-for-sale securities and held to maturity securities, cannot be reversed.

Indian GAAP	IAS/IFRS	US GAAP
	investments are those that do not qualify as either trading or held-to-maturity investments. Changes in fair values of trading investments are recognize as profit or loss in the income statement. Held-to-maturity investments are carried at amortized cost. Changes in fair values of available-for-sale investments can either be recognized in the income statement or in the statement of shareholder' equity.	
Other comprehensive Income		
All items of income are included in net income, unless specifically permitted to be adjusted to equity.	Certain foreign exchange differences, changes in fair values of available-for-sale investments and related amounts of taxes are recognized in the statements of changes in shareholders' equity	Certain items of revenues, expenses, gains and losses that under generally accepted accounting principles are included in comprehensive income but excluded from net income are classified as other comprehensive income. Items included in other comprehensive income shall be classified based on their nature. For example, under existing US accounting standards, other comprehensive income shall be classified separately into; foreign currency items. Minimum pension liability adjustments, and unrealized gains and losses on certain investments in debt and equity securities.
Deferred Income Taxes		
Deferred tax resulting from "timing differences" between accounting and taxable income is accounted for using the tax rates and laws that have been enacted or substantively enacted as on the balance sheet date. Deferred tax assets relating to carry forward losses and unabsorbed depreciation should be	Deferred income taxes are recognized for the future tax effects of temporary differences between accounting and tax basis of assets at the enacted or substantively enacted tax rates. Deferred tax assets and liabilities must be recognized regardless of when the timing difference is likely to	Deferred tax liabilities and assets are recorded for the tax effect of all temporary differences between the accounting and tax base of assets and liabilities, and operating loss carry-forwards, at enacted rates. Changes in tax rates are reported in the income statements in the period of enactment.

Indian GAAP	IAS/IFRS	US GAAP
recognized only to the extent that there is virtual certainty supported by convincing evidence that sufficient future taxable income will be available against which such deferred tax assets can be realized. All other deferred tax assets should be recognized to the extent that there is reasonable certainty that future taxable income will be available for such deferred tax assets will be realized.	reverse. Deferred tax assets must be recognized when it is probable that sufficient taxable profits / reversible differences will be available against which the deferred tax assets can be utilized.	A valuation allowance is made against deferred taxes if, based on the weight of available evidence, it is more likely that not the some portion or all of the deferred tax asset will not be realized.
Dividend on Preference Shares		
Dividend is recorded as an appropriation from earnings and reflected as a liability when declared.	Dividends relating to a financial instrument classified, as liability should be reported in the income statement as an expense. Such dividends may be shown in the income statement either as interest or as a separate item.	Similar to IFRS except that dividends should be presented separately in the income statements from interest payments to other creditors
Premium on Redemption of Preference Shares		
Premium on redemption of preference shares should be either provided for out of the profits of the Company or adjusted against the securities premium account.	These shares would be classified as a liability, and the return assured in the eventuality of redemption would be accrued as interest expense.	Similar to IFRS.
Sale and Leaseback Transactions		
Gain on a sale and leaseback transaction, where the leaseback is an operating lease, is recognized immediately.	Similar to Indian GAAP.	If the sale-leaseback transaction results in an operating lease, the timing of the recognition of a gain on the sale depends on whether the seller has leased back a minor portion of the asset or more than a minor portion. If the present value of a reasonable amount of rentals for the leaseback period represents 10% or less of the fair value of the asset sold, the seller-lessee has leased back a minor portion. In such situations, the seller should recognize any gain on the sale of the asset at the time of the sale. If the

Indian GAAP	IAS/IFRS	US GAAP
		seller-lessee retains more than a minor portion, but less than substantially all of the use of the property, any gain in excess of the present value of a reasonable amount of rent should be recognized currently. The remaining gain on the sale should be deferred and recognized as a reduction of rent expense over the term of the lease in proportion to the related gross rentals. A loss on the sale should be recognized immediately.
Finance Leases		
Requires recognition of an asset held under a finance lease with a corresponding obligation to pay future rentals, at an amount equal to the lower of the fair value of the asset and the present value of the minimum lease payments (MLPs) at the inception of the lease. The asset is depreciated over its useful life or the lease term if shorter. However, the latter is permitted only if there is no reasonable certainty of the lessee obtaining ownership of the asset. The interest rate implicit in the lease must normally be used to calculate the present value of the MLPs. If the implicit rate is unknown, the lessee's incremental borrowing rate may be used.	Similar to Indian GAAP.	Similar to Indian GAAP, except that the lessee's incremental borrowing rate must be used to calculate the present value of the MLPs, excluding the portion of payments representing executory costs unless it is practicable to determine the rate implicit in the lease and the implicit rate is lower than the incremental borrowing rate. If the incremental borrowing rate is used, the amount recorded as the asset and obligation is limited to the fair value of the leased asset. Asset amortization is consistent with Indian GAAP.
Onerous contracts		
An onerous contract is a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. Under Indian GAAP, the Company does not recognize any provision on account of onerous	If the Company has a contract that is onerous, the present obligation under the contract should be recognized and measured as a provision.	A liability for costs to terminate a contract before the end of its term should be recognized and measured at fair value when the entity terminates the contract in accordance with the contract terms. A liability for costs that will continue to be incurred under a contract for its remaining

Indian GAAP	IAS/IFRS	US GAAP
contracts		term without economic benefit to the entity should be recognized and measured at its fair value when the entity ceases to use the right conveyed by the contract.
Provisions		
Discounting of liabilities is not permitted and all provisions are carried at their full values	Where the effect of the time value of money is material, the amount of a provision may be the present value of the expenditures expected to be required to settle the obligation. The discount rate should be pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. The discount rate should not reflect risks for which future cash-flow estimates have been adjusted and any change in present value of Provision is recognized as Interest Cost	Similar to IFRS. However, if a range of estimates is present and no amount in the range is more likely than any other amount in the range, the `minimum' (rather than the mid-point) amount must be used to measure the liability. A provision must only be discounted when the timing of the cash flows is fixed.
Impairment of assets		
The standard requires the company to assess whether there is any indication that an asset is impaired at each balance sheet. Impairment loss (if any) is provided to the extent the carrying amount of assets exceeds their Recoverable Amount. Recoverable Amount is higher of an assets' selling price or its value in use. Value in use is the present value of estimated future cash flows expected to arise from the continuing use of an asset and from its disposal at the end of its useful life. An impairment loss for an asset in prior accounting periods should be reversed if there has been a change in estimates of cash inflows, cash	Similar to Indian GAAP.	Long-lived assets should be tested for impairment whenever evens or changes in circumstances indicate that the carrying value of such assets may not be recoverable. For assets to be held and used, impairment is first measured by reference to undiscounted cash flows. If impairment exists, the entity must measure impairment by comparing the asset's carrying value to its fair value. Assets classified as held for disposal must be measured at the lower of the carrying amount or fair value less selling costs. The impairment loss is measured as the excess of the carrying amount over the asset's fair value, being either market value (if an active market for

Indian GAAP	IAS/IFRS	US GAAP
outflows or discount rates used to determine the asset's recoverable amount since the last impairment loss was recognized. In this case, the carrying amount of the asset should be increased to its recoverable amount. The reversal of impairment loss should be recognized in the income statement.		the asset exists), the best information available in the circumstances including the price for similar assets, or the sum of discounted future cash flows or other valuation techniques, using market assumptions. For assets to be disposed of, the loss recognized is the excess of the asset's carrying amount over its fair value less cost to sell. Costs to sell include incremental direct costs to transact the sale that would not have been incurred except for the decision to sell. Such assets are not depreciated or amortised during the selling period. Impairment losses recognized cannot be reversed if there is a subsequent increase in the fair value of the asset.

SIGNIFICANT FUNDAMENTAL CONCEPTS

Accounting Methodology

The fundamental accounting assumptions of going concern, consistency and the accrual of income and expenses need not be disclosed in the financial statements. Departures from these basic concepts, however, must be disclosed.

All significant accounting policies should be disclosed in one place in a separate statement or schedule to the financial statements. The effect of any material changes in accounting policies must be quantified and the reasons for such changes explained. If, any material change is not quantifiable, the fact should be stated.

Inflation accounting is not used in India, accounts are prepared using the traditional cost accounting convention.

Change in Method of Accounting

Companies may change a method of accounting. The change, however, can be made to comply with a statute or an accounting standard, or if it is felt that the change would result in more appropriate presentation of the financial statements of the enterprise, the new method should be followed consistently. A description of the change and the reasons for it should be disclosed in the financial statements in the year of the change.

Disclosure, Reporting and Filing Requirements

Disclosure Requirements

General Requirements

Financial statements should consist of the following items:

- Balance Sheet
- The statement of profit and loss

- Notes to the financial statement
- Auditor's Report
- Cash-flow statement

Applicability of Accounting Standards

- Section 129 of the CA, 2013 requires that the financial statements shall comply with the accounting standards notified under Section 133 and Section 133 provides that the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- Rule 7 of the Companies (Accounts) Rules, 2014 provides that as a transition provision, the standards of accounting as specified under the Companies Act, 1956 (i.e. the Companies (Accounting Standards) Rules, 2006) shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under Section 133.

The balance sheet and the statement of profit and loss should provide all disclosures necessary to give a true and fair view of the company's financial position and the results of operations. The balance sheet should be presented in the standard format detailed in Schedule III to the Companies Act, 2013. The notes to the financial statements provide additional disclosures concerning the significant accounting policies, contingent liabilities, managerial remuneration, payment to auditors, value of goods imported, details of raw material consumption and amount of foreign exchange received and expended. The notes to the financial statements should also include quantitative information relating to opening stock, purchases, production, sales and closing stock, as well as the production capacity.

The companies are also required to disclose basic and diluted earnings per share with the accounting policy and the method of computation.

The financial statements must be signed and dated by the secretary and by at least two directors, including a managing director, if any, apart from statutory auditors.

Directors' Report
The directors' report must accompany each set of financial statements and must include the following information:

1. Financial summary /performance of the company
2. Dividend recommended to the shareholders
3. Transfer of profits to reserves and surplus
4. Brief description of the Company's working during the year
5. Change in nature of business
6. Material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of report
7. Details of significant and material orders passed by the regulators or courts or tribunal impacting the going concern status and company's operations in future.
8. Details in respect of adequacy of internal financial controls with reference to the Financial Statement.
9. Details of Subsidiary/ Joint Venture/ Associate Companies
10. Performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement.
11. Deposits
12. Statutory Auditors

13. Auditor's Report
14. Share Capital
15. Extract of Annual Return
16. Details of conservation of energy, technology absorption, foreign exchange earnings and outgo
17. Corporate Social Responsibility
18. Directors
19. Number of meetings of the Board of Directors
20. Audit Committee
21. Details of establishment of vigil mechanism for directors and employees
22. Nomination and Remuneration Committee
23. Particulars of loans, guarantees or investments under Section 186
24. Particulars of contracts or agreements with related parties
25. Managerial Remuneration
26. Secretarial Audit Report
27. Corporate Governance Certificate
28. Risk Management Policy
29. Director's Responsibility Statement
30. Acknowledgements.

In respect of listed companies, SEBI requires that as part of the directors' report or as an addition thereto, a separate section on corporate governance be included with a detailed compliance report on corporate governance. Non-compliance with any mandatory requirement with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted

Auditors Report

The auditors' report must include an opinion on the financial statements of the company and must state whether the company and its branches have maintained the books of account as required by law, and whether the books of account agree with the balance sheet and the statement of profit and loss. Further, the auditors are also required to report if any of the directors are disqualified as being appointed as directors under Section 164(2) of the Companies Act, 2013.

In addition to the above, the auditors are also required to report on the matters stated in the Companies (Auditors' Report) Order, 2015 issued by the Central Government of India which include inter alia, reporting upon various specific aspects of internal control, inventory valuation, payment of statutory dues, description of contingent / contested liabilities, description of fraudulent transactions by or on the company, utilization of long term / short term funds, etc.

Interim Financial Reporting Requirement of Listed Companies

Quarterly Financial Statements:

Each listed company is required to announce unaudited financial results on a quarterly basis, within one month from the end of a quarter, in the specified format and announce the same in the newspapers and subject the results to limited review by the statutory auditors. In respect of the results of the last quarter of the financial year, if the company intimates in advance the stock exchange that it will publish audited results within a period of three months from the end of the last quarter of the financial year, the company need not publish or furnish to the stock exchange the unaudited results for the last quarter. If the sum total of the first, second, third and fourth quarterly results with respect to any item given in the format varies by 20 per cent when compared with the audited results for the full year the company shall explain the reasons to the stock exchange. Where the listed companies prepare the un-audited quarterly results, these are required to be approved by the board of directors and subjected to a limited review by the auditors of the company [or by a chartered accountant in the case of public sector units (PSUs)] and a copy of the

review report is to be submitted to the stock exchange within two months after the close of the quarter.

Half-yearly Financial Statement:

In addition, all listed companies are required to prepare half yearly results for first and second quarter and same is to be approved by the board of directors and subjected to a limited review by the auditors, and a copy of the review report is submitted to the stock exchange within two months after the close of the quarter. Items having more than 20 per cent variation as compared to those reviewed by the auditors are required to be reported. If the company decides to publish audited half-yearly financial results within two months of the close of the half year, then un-audited results and the limited review report need not be published / given to the stock exchange.

Annual Reporting Requirements

Companies in India are required to comply with the various reporting requirements. The requirements are greater for public companies than for private companies. The significant documents that need to be filed are the annual return, balance sheet, the statement of profit and loss and the auditor's and board of directors' reports and charges.

Annual financial statements must be sent to all shareholders and debentures holders at least twenty one days before the annual general meeting (AGM). Listed companies must send annual financial statements to their stock exchange. In addition, listed companies have to publish quarterly financial statements.

At every AGM, the board of directors is required to present the company's financial statements comprising a balance sheet, the statement of profit and loss, cash-flow statements and the auditors' and board of directors' reports to the shareholders.

The formats of the balance sheet and the statement of profit and loss are prescribed by the Companies Act, 2013 and companies are required to publish annual accounts in those formats.

Dividend Payments

Companies having shares are allowed to pay dividends only out of their profits after providing for depreciation on fixed assets in the manner prescribed by the Companies Act 2013. However, before the payment of dividends, certain minimum amounts are required to be transferred to the company's reserves. Further, payment of dividends is permitted out of the company's accumulated reserves subject to compliance with certain prescribed rules.

Dividends can be recommended only by the board of directors and require shareholder approval. However, shareholders cannot dictate an increase in the percentage of dividend.

Dividends are declared in percentage terms, i.e. percentage of the face value of the shares and can be declared more than once a year.

Filing Requirements

After the annual financial statements have been presented at the AGM, three certified copies of the same must be filed with the registrar of companies within sixty days of adoption by the shareholders.

Requirement for Different Industries

The government requires certain manufacturers to maintain cost accounts and may order an audit by a qualified cost auditor of the same. Banking, electricity and

insurance companies are governed by special Acts, rather than the Companies Act, 2013.

Audit Requirements

All companies, banks and financial institutions must have their accounts audited by an auditor who is a practicing member of the ICAI. The branch of a company is also required to be audited. Such audit can be conducted by the company's auditor or the branch auditor qualified to be appointed as such by the company.

The first auditor of the company is usually appointed by the directors. The shareholders appoint the subsequent auditors at every AGM and establish their remuneration. The Companies Act, 2013 sets out the matters on which the auditor has to report.

Every company with gross revenues in the excess of Rs. 1 Crore has also to get its accounts audited under the Income Tax Act, 1961. This audit is required to obtain an understanding and confirmation of the specific information required by the revenue authorities for tax assessments. The Companies Act, 2013 also grants the government the powers to order other audits like cost audits and investigations. In addition, every listed company or company with a paid-up capital and reserves exceeding Rs. 50 Crores or more during the preceding financial year as at the commencement of the financial year; or average annual sales above Rs.50 million for three consecutive years of 200 crores or more during the preceding financial year or outstanding loans; or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or outstanding **deposits** of twenty five crore rupees or more at any point of time during the preceding financial year, is required to have an appropriate internal audit system.

PLANNING THE ENTRY OF AN EXPATRIATE TO INDIA

ENTRY INTO INDIA

Any foreign national who wishes to visit India, whether for business or otherwise, must obtain a visa.

Type of Visa	Period for which Granted (Maximum)
Tourist	Upto 6 months with multiple entries
Business	Upto 5 years with multiple entries
Transit	15-days with single/double entry
Employment	Issued for a period of 1 year or period of contract and upto 5 years in case of directors

Foreign nationals rendering services in India should arrive in India on an employment visa. The spouse and the family members accompanying the foreign national should arrive in India on an entry visa with multiple entries.

WORK PERMIT / EMPLOYMENT VISAS FOR FOREIGN WORKERS

An individual visiting India must have a valid passport. According to the provisions of The Foreigners Act 1946 and The Foreigners Order 1948, a valid visa is required for any "foreigner" intending to visit India. However, a foreigner who is a Person of Indian origin (PIO) or Overseas Citizen of India (OCI) card holder is exempted from visa requirement.

A foreigner means a foreign national who is not a citizen of India. A visa may be an "Employment Visa", a "Business Visa" (BV) or a "Tourist Visa" and it may be either "Single Entry" or "Multiple Entry." A visa is obtainable from the Indian Consulates or High Commissions situated in the respective countries.

A foreign national is not permitted to take up employment in India unless he holds an Employment Visa. You should therefore ensure that you have a valid Employment Visa if you intend taking up employment. Employment income received in India cannot be repatriated unless the expatriate holds a valid employment visa. In case you come to India on a short term business visit you will need Business Visa. Tourist Visas are issued to tourists.

Ministry of Commerce and Industry has issued a clarification wherein any foreign national coming to India for executing projects / contracts will need to come on an employment visa.

It has been further clarified that BV will continue to be issued to foreign nationals who visit India for bonafide business purposes.

The bonafide business purposes are defined as below:

- To establish an industrial / business venture;
- To explore possibilities to set up industrial business ventures in India;
- To purchase / sell industrial products in India

EMPLOYMENT CONTRACTS

Indian income tax is levied on income for services rendered in India. This is true even if your employer is outside India and the salary for services rendered in India is paid into your bank account outside India.

Ideally you should be employed as a full-time employee under a service contract setting out in clear terms the remuneration / salary and the non-cash benefits (perquisites) to which you will be entitled.

If you are being sent to India, on secondment by your foreign employer, for services to be rendered in India, a proper secondment structure should be put in place. The considerations which should be kept in mind are: where salary should be delivered; if salary is to be paid outside India, would it be charged back to the Indian entity; current exchange control regulations for delivering salary; corporate tax implications (permanent establishment exposure), withholding tax, the transfer pricing regulations and service tax implications.

BANK ACCOUNTS

No restrictions are imposed on the Foreign Nationals as regards to the opening of bank accounts in India either to deposit their Indian earnings or to receive funds from abroad to meet normal living expenses. Further, on giving requisite declarations foreign currency or traveler's' cheques are also allowed to be deposited.

REPATRIATION OF EARNINGS

The current exchange control regulations permit a foreign national, who is an employee of foreign company, on secondment / deputation to a subsidiary in India, to maintain a foreign currency account in a bank outside India and receive entire salary outside India provided full taxes are paid on the said salary accrued in India. Foreign nationals working in India can repatriate 100% of salary to a place outside India provided income-tax is paid on the entire salary.

SPECIAL PROVISIONS APPLICABLE TO NON-RESIDENTS

INTRODUCTION

The provisions of the Income-tax Act, 1961 (the Act) extends to the whole of India. However, non residents also come within the purview of the provisions of the Act as they do business in or with India or earn any other income from India. Accordingly, the Act contains specific provisions which deal with taxation of non-residents. Section 4 read with Section 5(2) of the Act provides that a non-resident would be chargeable to tax in India only in respect of the income earned during a financial year which is either received or deemed to be received in India in that year; or which accrues or arises or is deemed to accrue or arise in India during such year.

It is a common principle that tax liability in the hands of a non-resident shall be determined on the basis of nature of relevant income. Depending upon the nature of income, a non-resident shall be subject to Income Tax in India in the method and manner applicable to such income as prescribed under the provisions of the Act read with concessions / exemptions provided under the treaty. In view of the provision of sub-section 2 of section 90 of the Act and several judicial decisions in this regard, in relation to the tax payer to whom the treaty applies, the provisions of the Act shall apply to the extent they are more beneficial to the concerned assessee. It is a well established principle that assessee who is liable to pay Income Tax in India has an option to avail the beneficial provision of the treaty vis-à-vis the provisions of the Act. In this connection, reference is invited to the decision in CIT V/s Vishakapatanam Port Trust [1983] reported at 144 ITR Page 146 and CIT V/s Hindustan Paper Construction Limited [1994] reported at 77 Taxman 450.

TAX INCIDENCE

To conclude the tax incidence of a non-resident in India, a detailed analysis of the relevant provisions of the Act as well as of the relevant treaty shall be necessary.

The tax incidence shall depend upon, amongst other factors, on the following:

- Legal & Residential status of the tax payer
- Treaty entitlement of a non-resident tax payer
- Character of Income under consideration and its taxability

Legal & Residential status

As per the provisions of the Act, a non-resident is subject to income tax in India on the amount of income which

- Is received or is deemed to be received in India, or
- Accrues or arises or is deemed to accrue or arise in India

Treaty entitlement of a non-resident tax payer

Provisions of Section 90 (2) of the Income Tax Act, 1961 ('the Act')

"Where the Central Government has entered into an agreement with the Government of any country outside India under sub-section (1) for granting relief of tax or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee."

In view of the above provision & further in view of well-established principle of interpretation, it is clear that the provisions of a treaty override the domestic law to the extent that provisions of the treaty are beneficial to the assessee. Refer Central Board of Direct Taxes ('CBDT') circular no 333 dated April 2, 1982. Attention in this regard can also be drawn to the following decisions:

- CIT v Visakhapatnam Port Trust (144 ITR 146) (AP)

- CIT v Davy Ashmore India Limited (190 ITR 626) (Cal).

Character of Income under consideration

Generally, income that could be earned by a non-resident would be Dividend Income, Capital Gains on sale of shares, Interest Income, Royalties and fees for technical services (RFTS) and / or Business Income. Income from capital gains and interest income have been dealt with elsewhere in this note. Analysis of the relevant provisions of the Act and the Tax Treaty has been summarized below for dividend and business income.

Dividend Income:

Taxability under the Act
As per Finance Act 2003, after 1st April 2003, Domestic Company and Mutual Fund declaring dividend or income shall pay dividend distribution tax / income distribution tax. No tax shall be deducted at source by the company or the specified company or the Mutual Fund from the amount of dividends or income on units paid or distributed after 1st April, 2003. Consequently, dividend income received from the Indian Company is also made exempt from tax in the hands of a non-resident under section 10 (34).

Taxability under the Treaty
With regards to the assessee who is a resident of a treaty nation, the income, which is in the nature of "Dividend", shall be covered by a particular Article of the DTAA. As per the treaty, dividend income arising from shares held in Indian companies by a non-resident are liable to income tax in India at NIL rate or at the rate not exceeding 5 per cent or at the rate not exceeding 15 per cent as the case may be.

Since the provisions of the Act would be more favourable to a non-resident, dividend income, received from domestic company on or after 1 April 2003, should not be subject to Income tax in India.

Income from Business Activities:
As per the present legal position, it emerges that income arising to a FII from undertaking share trading/investment activities from executing relevant trades on a derivative segment of a recognized stock exchanges at India would be characterized as a 'Business Income' and not as 'Capital Gains'. Any business income or business profit can be subject to income tax in India only to the extent that such profits should be attributable to the Permanent Establishment / business connection of FII in India.

Taxability of business income under the Act
Section 4 read with Section 5(2) of the Act provides that a non-resident would be chargeable to tax in India only in respect of the income earned during a financial year which:

- is received or deemed to be received in India in that year; or
- accrues or arises or is deemed to accrue or arise in India during such year.

Under the scheme of the Act, unless the place of accrual of the income of the non-resident or place where income arises is within India, he cannot be subjected to tax. Only to the extent to which any income accruing or arising without India is fictionally deemed to accrue or arise in India, the income of the non resident will be made liable to be taxed under the Act. Under the scheme of the Act, the profits or income of a non-resident which can reasonably be attributed to operations carried out in India can only be brought into the tax net. In CIT v Toshoku Ltd (125 ITR 525), the Supreme Court has summarized the position in the following terms:
In the case of a business of which all operations are not carried in India, the income of the business deemed under the Clause to accrue or arise in India shall be only

such part of the income as is reasonably attributable to the operations carried out in India. If however all the operations are not carried out in the taxable territories, the profits and gains of business deemed to accrue in India through and from business connection in India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the taxable territories. If no operations are carried out in the taxable territories, it follows that the income accruing or arising abroad through or from any business connection in India can not be deemed to accrue or arise in India.

Section 9(1)(i) of the Act provides that all income accruing or arising, whether directly or indirectly, through or from any:

- business connection in India; or
- property in India; or
- asset or source of income in India; or
- a transfer of a capital asset situated in India,

shall be deemed to accrue or arise in India.

Explanation (a) to that Clause provides that in the case of a business of which all the operations are not carried out in India, the income of the business deemed under that Clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

The scope of the expression 'business connection' has been explained by the Supreme Court in CIT v R D Aggarwal & Co. (reported at 56 ITR page 20). The term 'business connection' means something more than a business. It presupposes an element of continuity between the business of the non-resident and the activity in the taxable territory. The Supreme Court explained that in the case of a business of which some operations are carried out in India and some outside India, the income of business deemed under section 9 (1)(i) of the IT Act shall be only such part of the income as is reasonably attributable to the operations carried out in India.

In absence of any 'business connection' in India, a non-resident should not be liable to any tax in India, under the head 'business income'. Having said that, it should be borne in mind that existence of any 'business connection' in India shall depend fully on the facts and circumstances of each case for the year under consideration.

Taxability under the Treaty

As per the settled legal principle, business income shall be taxed in India under the head income from business. In such a scenario, income shall be treated as a business income / business profits covered by the relevant article of the tax treaty.

As per the provisions of the relevant article of the Tax Treaty, dealing with business income or business profit provides that such income can be subject to income tax in India only to the extent that such profits would be attributable to the 'Permanent Establishment (PE)' of a non-resident existing in India.

A non-resident would be entitled to avail the aforestated benefit provided under the treaty provided it can be established, on the facts and circumstances that no PE of the non-resident exists in India.

Amongst other factors, the relevant facts that could be considered in this regard are (1) whether the non-resident has appointed any agent in India and (2) whether the non-resident has any office or branch or any such other place of business or management in India.

The non-resident would be under obligation to prove that income/profits earned by it can not be attributable to the PE in India. The term "Permanent Establishment" has been defined under relevant article of the Tax Treaty.

Of the above, the provisions that are more favorable to the non-resident shall apply.

Royalties and Fees for Technical Services ("RFTS")

Two very important sources of income attributable or accruing to a non resident in our view are income from payment of royalty and fees for technical services.

Royalties

The definition of royalty in the Indian Income-tax Act is very widely worded and covers consideration even for outright sale. However, royalty shall not be deemed to accrue or arise in India when the tax payer is a resident of India and if the payment is for the purposes of business or profession carried on by such persons outside India or for the purpose of making or earning any income from any sources outside India.

As corollary to this, the royalties shall be deemed to accrue or arise in India even if it is paid by a non-resident if the payment is-

- for the purpose of a business or profession carried on by such person in India or
- for the purpose of making or earning any income from any source in India.

As a general rule, income from royalties may be taxed on a gross basis at a rate prescribed in the DTAA or as per the Indian Income-tax Act, whichever is more beneficial to the tax payer. Currently, the rate prescribed is 10% under the Indian Income-tax Act, subject to fulfillment of certain conditions.

Fee for Technical Services

This term would include payment made for rendering of any management, technical or consultancy services including the provision of services of technical or other personnel. Some of the DTAAs which India has entered into with various countries have definition of fee to technical service which is narrower in scope and hence tax payer or non resident of that country can make use of that definition to come out of clutches of the Indian Income-tax Act.

DOING BUSINESS IN INDIA

A foreign company may establish its presence in India in various forms. The taxability depends upon the mode / type of vehicle / entity used for doing business in India and also the nature of such income. Generally, foreign companies make use of the following types of entities.

Foreign Corporations

Foreign corporations that are incorporated outside India but have a presence in India in the form of liaison offices, project offices, branch offices, etc. are also governed by the Companies Act, 1956, which contains special provisions for regulating such entities. Such companies have to register themselves with the registrar of companies, New Delhi within thirty days of establishing a place of business in India

Liaison Office

Usually, foreign companies enter India through the liaison office route. Under the present FEMA regulations, liaison office is not allowed to do business and generate income in India, the role of which is restricted to collection and dissemination of information on behalf of its principal. It is dependent on head office for all its expenses, therefore, no tax liability accrues.

Joint Venture / Subsidiary

(i) Business Profit:

A foreign company may enter into a joint venture or set up a wholly or partly owned subsidiary for doing business in India. In both cases, the company incorporated in India, will become an Indian company and subject to tax at the rate applicable to a domestic company, which is presently at 33.99% (30% + 10% S.C. + 3% Education Cess).

(ii) Dividend Income:

Dividend distributed by an Indian company is totally tax-free in the hands of the recipient. Therefore, a foreign company, receiving dividend from subsidiary in India will not be taxed on such income, though the subsidiary will be subject to dividend distribution tax.

Branch Office

This is a crucial form of business entity, which attracts tax at full rate as applicable to a foreign company. Branch of a foreign company is subjected to tax @ 42.23%. Branch is an extension of its head office and is considered as permanent establishment of the foreign company under DTAA. Profits accruing to a foreign company, attributable to its branch in India, are taxable in India.

Agent

Many companies do business in India by appointing an agent. Under the provisions of DTAA, if the agent is an independent entity and is acting in the ordinary course of business, then this arrangement would not result in any tax liability for the foreign company as, such a situation tantamount to doing business with India. However, if the agent is a dependent entity, then it would become a permanent establishment of the foreign company in India and profits attributable to such activities in India will be taxable.

Being a developing country, India has been broadly adopting the UN model of such agreement.

PRESUMPTIVE TAX PROVISIONS UNDER THE INCOME TAX ACT – AS APPLICABLE TO NON RESIDENTS

INTRODUCTION

The Indian Income Tax Act has adopted presumptive taxation system for certain types of businesses. Presumptive taxation has been adopted for both, residents as well as non resident tax payers. The object of introducing the presumptive taxation system is to overcome difficulties being faced in assessment for determining the correct total income in the case of non resident tax payer engaged in certain special business. Some of the old provisions required determination of profits by apportioning global profits of foreign enterprise between their Indian business and foreign business which were posing difficulties. Other old provisions required the verification of expenses incurred abroad which was also posing difficulties since books were also maintained abroad. To overcome such problems and practical difficulties, the presumptive tax system has been introduced.

The presumptive basis of determining the income is specified below:

Sr. No.	Tax payer	Section	Tax rate	Nature of income
1	Overseas financial organization (offshore Funds)	115 AB	10%	(i) Income from units purchased in foreign currency and (ii) Long term capital gains arising from the transfer of such units.
2	Non-resident	115 AC	10%	(i) Income from notified bonds or bonds of any public sector company bought in foreign currency (ii) Income by way of dividends on Global Depository Receipts (GDRs) other than those on which Dividend Distribution Tax (DDT) has been paid and purchased in foreign currency; and (iii) Long term capital gains arising from the transfer of such bonds or GDRs.
3	Resident employee of an Indian company or its subsidiary company engaged in specified knowledge based industry or service.	115 ACA	10%	(i) Income by way of dividends other than those on which DDT has been paid from GDRs issued by the Indian Company in accordance with Employee's Stock Options Scheme notified by the Central Government; (ii) Income by way of long term capital gain arising from the transfer of such GDRs.

Sr. No.	Tax payer	Section	Tax rate	Nature of income
4	Foreign Institutional Investor	115 AD	20% 15% 30% 10%	a) Income (other than those on which DDT has been paid) received in respect of securities listed in a recognized stock exchange in India (other than units covered in Sr.No.1) b) Any short term capital gain on transfer of - Securities on which Securities Transaction Tax (STT) has been paid - Other securities c) Long term capital gains arising there from
5	Any tax payer	115BB	30%	Winnings from any lottery or crossword puzzles or races including horse races or card game and other games of any sort or gambling or betting
6	Foreign national non resident sportsman	115 BBA	20%	Income from – i) Participation in any game or sport (other than those given in Sr.No.5 above); or ii) Advertisement; or iii) Contribution of articles relating to any game or sport in India in journals, newspapers etc.
	Non resident sports association or institution		20%	Income by way of amount guaranteed to be paid or payable in relation to any game or sport played in India

Further, certain business income of the nature specified below is taxed at a prescribed rate which is given as under:-

Sr. No.	Nature of Income	Section	% of gross receipts	Gross receipts
1	Profit from Shipping business	44B	7 ½ %	(i) If shipped at any port in India – The amount paid or payable to the tax payer anywhere (whether in or outside India) (ii) If shipped at any port outside India – The amount received or deemed to be received by him in India
2	Profit from business of exploration of mineral oil etc.	44 BB	10%	Receipts from provision of services and facilities in connection with, or supply of plant and machinery on hire for prospecting or exploration of mineral oil – (i) If such activities are

Sr. No.	Nature of Income	Section	% of gross receipts	Gross receipts
				carried out in India – The amount paid or payable to him anywhere. (ii) If such activities are carried out outside India – the amount received or deemed to be received in India.
3	Profit from operation of aircraft	44 BBA	5%	Receipts from carriage of passengers, livestock, mail or goods – (i) If carried from any place in India – the amount paid or payable anywhere. (ii) If carried from place outside India – the amount received or deemed to be received in India.
4	Profit (of foreign companies) from business of civil construction in turnkey power projects	44 BBB	10%	Amount paid or payable (anywhere) on account of civil construction, erection, testing or commissioning in connection with a turnkey power project approved by Central Government and financed under International aid programme.

FOREIGN TAX CREDIT AND DOUBLE TAXATION RELIEF

The Indian tax laws empower the government to enter into agreements with other countries to grant relief in respect of income tax to avoid income from being doubly taxed. All provisions discussed above are subject to Double Tax Avoidance Agreements (also known as "Tax Treaties") entered into with various countries. The provisions of the relevant tax treaty or domestic law provision whichever is beneficial to the tax-payer would be applicable.

Where no DTAA exists, the Indian income tax law provides unilateral relief in the form of a tax credit for foreign taxes paid on income accruing or arising outside India during a previous year.

ADVANCE RULING

The Indian Income-tax Act also provides that any non resident can approach an authority known in India as Authority for Advance Ruling ("AAR") seeking clarification about the tax implication or other connected aspects in respect of transaction undertaken or proposed to be undertaken in India by way of investments, joint venture, collaboration etc.

Advance ruling may be obtained from the AAR on an application in the prescribed form. The contents of the application are not public. The advance ruling is a time bound process and a ruling is required to be pronounced within six months from the receipt of the application. A resident may resort to the advance ruling mechanism only in respect of an assessment pending before any revenue or appellate authority.

Advance ruling pronounced by the authority shall be binding only on the tax payer who sought the ruling and in respect of the transaction in relation to which it has been sought and also on the income tax authorities in respect of the said transactions.

The ruling shall remain effective unless there is a change in law in India or the basis of the facts on which the ruling has been pronounced has changed.

Scope of advance ruling widened [section 23A(a) and section 23C(2)(e)]

1. The scope of advance ruling has been significantly widened in the following manner:-

   i. Existing producer or manufacturer may seek advance ruling at the time of starting a new line of business

      Erstwhile position

      Advance ruling means the determination, by the authority of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity proposed to be undertaken, by the applicant [Section 23A(b)]. Earlier, activity was defined to mean production or manufacture of goods [Section23A(a)]

      New Position

      The definition of activity has been expanded to include any new business of production/manufacture proposed to be undertaken by the existing producer/manufacturer, as the case may be. It implies that any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him.

   ii. Advance ruling can also be sought on the issue of admissibility of credit of service tax paid or deemed to have been paid

      Erstwhile position

      Earlier, the application for advance ruling was admissible, inter alia, on the question of admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to manufacture of the excisable goods [Section 23C(2)(e)].

      New Position

      Section 23C(2)(e) has been amended to extend the advance ruling provisions to the admissibility of the credit of service tax paid or deemed to have been paid on input services used used in the manufacture of excisable goods as well.

   iii. In section 23F (relating to advance ruling to be void in certain circumstances), reference to section 28-I which was earlier given erroneously has been appropriately substituted with section 23D [procedure on receipt of application for advance ruling under excise].

2. Scope of advance ruling widened by enabling the existing importer/exporter to seek advance ruling at the time of undertaking a new business of import or export [Section 28E(a)

   Erstwhile position

Advance ruling means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant [Section 28E(b)].Earlier, the activity was defined to mean import or export [Section 28E(a)].

New Position

The definition of activity has been expanded to include any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be. It implies that any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him.

3. Benefit of Advance ruling extended to resident public and private limited companies

Erstwhile position

As per provisions relating to Advance Rulings contained in section 23C of the chapter III A of central Excise Act, 1944, and similar provisions contained in Section 96A of the Finance Act, an applicant desirous of obtaining an advance ruling may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought. For this purpose, followings are allowed to make application to advance ruling authority-

- a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- a resident setting up a joint venture in India in collaboration with a non-resident; or
- a wholly owned subsidiary Indian company, of which the holding company is a foreign company, or which, as the case may be, proposes to undertake any business activity in India;
- a joint venture in India; or
- a resident Public limited companies
- a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 23C;

New Position

- The amendment seeks to extend the benefit of Advance Ruling to Resident Private Limited Companies. In pursuant to section 23A (c)(iii) of the Central Excise Act, 1944 and similar section 96A (b)(iii) of the Finance Act, 1994, the government has exercised its power to specify "Resident Private Limited Companies" as the category of persons who may obtain advance ruling. This amendment is made vide Notification no. 18/2014 CE (NT) DT. 11.07.2014 in Central Excise, vide Notification no. 51/2014 CUS (NT) DT. 11.07.2014 in Custom and vide Notification no. 15/2014- ST DT. 11.07.2014 in Service Tax.

  Thus, through above mentioned notifications, Central Government has exercised the power and specified the Resident Private limited Companies as class of person eligible to make application for Advance Ruling.

  For the purposes of this notification,-

(a) "private limited company" shall have the same meaning as is assigned to "private company" in clause (68) of section 2 of the Companies Act, 2013 (18 of 2013);

(b) "resident" shall have the same meaning as is assigned to it in clause (42) of section 2 read with sub-section (3) of section 6 of the Income-tax Act, 1961 (43 of 1961).

Advance Pricing Agreements

In order to provide tax certainty and unanimity in approach in international transactions between associate enterprises, the Finance Act, 2012 inserted Sections 92CCD and 92CD in the Income Tax Act, 1961 introducing the provisions of Advance Pricing Agreement (APA). The CBDT has prescribed an Advance Pricing Scheme in a notification dated 30.08.2012.

The notification of the APA rules was eagerly awaited by both the industry and the tax fraternity, given that the APA provisions had formally been introduced in India with effect from July 01, 2012 providing for its validity for a maximum of consecutive 5 years (unless there is a change in provisions of the Act having a bearing on the international transaction).

With the introduction of detailed rules as per the Notification below, the APA program is certainly seen as one of the more positive amendments introduced by the Finance Act 2012, which should assist taxpayers to obtain certainty on their crucial transfer pricing matters, if they so desire.

Internationally, as is widely known, the APA program is considered to be an excellent controversy management tool and many of the countries like USA, UK, Japan, Australia etc. which have specific transfer pricing regulations also provide for an APA option.

Salient Features

- Any person who has undertaken or is contemplating to undertake an international transaction shall be eligible to enter into an APA.

- Unilateral, bilateral and multilateral APAs may be entered into. For Unilateral APAs, applications to be filed with the Director General of Income Tax (International Tax) ('DGIT'); for bilateral and multilateral APAs1, application to be filed before the Competent Authority

- The most appropriate method would be any of the six methods provided in the Act.

- APA team to include experts in economics, statistics, law or any other field.

- APA shall not be binding on the Board or the taxpayer if there is a change in any of the critical assumptions - "Critical assumptions" means the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed.

- Pre-filing Consultation available - Every person proposing to enter into an APA shall be able to make an application in writing, requesting for a pre-filing consultation in Form No. 3CEC to the DGIT. The pre-filing consultation shall, among other things:

  - determine the scope of the agreement;

  - identify transfer pricing issues;

  - determine the suitability of international transaction for the agreement;

- discuss broad terms of the agreement.

In case of anonymous pre-filing, no names of the applicant taxpayer3 or the associated enterprise ('AE') are to be given. However, details of the authorized representatives of the applicant taxpayer who would be appearing before the authorities for the pre-filing discussions would need to be furnished.

- Application for an APA shall be made in Form No. 3CED to the DGIT (or the Competent Authority in the case of bilateral or multilateral APA) along with the requisite fees.
- The schedule of fees payable at the time of making the application is as under:

Amount of international transaction entered into or proposed to be undertaken in respect of which an agreement is proposed during the proposed period of agreement	**Fees in Indian Rupees**
Amount not exceeding Rs. 100 crores	10 lakhs
Amount not exceeding Rs. 200 crores	15 lakhs
Amount exceeding Rs. 200 crores	20 lakhs

- Timeline for making an application - In case an application is made for an international transaction of a continuing nature then it shall be made before the first day of the previous year relevant to the first assessment year for which the application is made. In any other case, before entering into the international transaction under consideration.
- The applicant taxpayer may withdraw the application of APA in Form No. 3CEE at any time before the finalization of the terms of the APA. No refund of fees shall be granted in such event.
- During the APA process, meetings with and site visits to the applicant taxpayer's premises may be permitted.
- The APA shall be entered into by the Board with the applicant taxpayer, after its approval by the Central Government.
- The taxpayer, who has entered into an APA, would be required to file an annual compliance report to the DGIT for each year covered in the APA, in Form No. 3CEF, within 30 days of the due date of filing the income-tax return for that year, or within 90 days of entering into the APA, whichever is later.
- The Transfer Pricing Officer shall carry out a compliance audit for each year covered in the agreement. Time limit for completion of the same is 6 months from the end of the month in which annual compliance report is filed. Regular audit not to be undertaken for transactions covered by the APA.
- Revision of APAs is possible in case of:

  - Change in critical assumptions;

- Change in law;
- Request from competent authority of other country in case of bilateral and multilateral agreements.

- The Board may cancel the APA for:
  - Failure of the taxpayer to comply with the terms of the agreement;
  - Failure to file the annual compliance report in time;
  - Annual compliance report filed contains material errors;
  - The taxpayer does not agree for revision of the APA.
- Renewal of the agreement is permissible, however no pre-filing consultation required.
- For bilateral and multilateral APAs, the AE would be required to initiate the APA process in the other country. The Indian Competent Authority shall consult and ascertain willingness of the Competent Authority in the other country for initiation of negotiations. The Applicant taxpayer shall not be entitled to be part of discussion between the Competent Authority in India and the Competent Authority in the other country or countries.
- Applicant taxpayer needs to communicate acceptance or otherwise to the APA agreed between competent authorities within 30 days.
- Roll back of Advance Pricing Agreements

  Given the success story of the APA by the CBDT, it has been proposed in this Budget that the APAs entered by Indian parties which determine the Arm's Length Price (ALP) or the Most Appropriate Method (MAM) of international transactions for the next five years from the year of entering into the APA will be applied backward for four years in the case of same Indian parties.

  This means that what ALP or MAM that has been arrived for future international transactions will also hold good for immediate four previous years of international transactions. This will reduce significant amount of pending litigations.

  Given that Tribunals and Courts are holding that ALP arrived at for subsequent AYs will be applicable to current year also, this is a significant move to reduce litigation especially during a period when transfer pricing disputes are proliferating.

  The above benefit is, however, subject to such conditions and procedures as will be prescribed.

RECENT AMENDMENTS BY FINANCE ACT 2015

Effective March 1, 2015, the facility of Advance Ruling has been extended to all resident firms, which has been defined to include the following resident entities within its scope:

- A "firm" as per Section 4 of the Indian Partnership Act, 1932;
- The limited liability partnership as per Section (2)(1)(n) of the Limited Liability Partnership Act, 2008;

- Limited liability partnership which has no company as its partner;
- The sole proprietorship;
- One Person Company.

INDIRECT TAXES

This section provides a general overview of various indirect taxes prevalent in India.

Customs Duty

At the time of the import of goods, custom duties are levied at specified rates. The rates are classified as Basic Duty (levied on the CIF value), Surcharge (levied on the basic duty), Additional Duty (levied as per the specified schedule) and Special Additional Duty (levied on the total of previous duties). Specified goods imported from certain countries are entitled to preferential rates of customs duty under various trade agreements between India and the concerned country.

Major amendments under the Finance Bill, 2015 for Custom Duty:

- Cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, the amount of penalty payable shall be 15% instead of the present 25%.

- Various provisions which have become redundant have been omitted such as time limit for passing of order by the settlement commission.

Notifications

- No Change in rate of Basic Custom Duty.
- Education Cess and Secondary & Higher Education Cess exempted on CVD and SAD. Accordingly same would be levied on Basic Custom Duty.
- No Change in rate of Duty for Chapters 1-24, 31-71, 75,77-80,82,83,86,88,89,91-98.
- Illustrative Changes in BCD rates:

Sr. No.	Description	Chapter No.	New rate (%)	Old Rate (%)
1.	Metallurgical Coke	270400	5	2.5
2.	Sulphuric Acid	28070010	7.5	5
3.	Iron and Steel, Articles of Iron and Steel	72 & 73	15	10
4.	Import of Commercial Vehicles	8702, 8704	40	10
5.	Bituminous Coal	27011200	10	55

VALUE ADDED TAX (VAT)

VAT is leviable on transfer of property in moveable goods - levied by respective States if sale within state or by the Central Government if sale made inter-state and also applicable on deemed sale transactions such as transfer of right to use goods (also referred to as lease of goods) and transfer of goods during composite contracts for goods and services (referred to as tax on works contract goods for this purpose includes tangible and intangibles (such as copyright, trademarks)
VAT regime taxes each sale within a state with the seller eligible to set off the VAT paid on local purchases made.
VAT Rates vary from 0% to 20%

In 2006, the Central Government took a major step towards the transition to a national integrated GST. Implementation of GST will be a historical reform in India as it will subsume CVD, excise duties, service tax, CST, state VAT and some other state levies.

At present, a dual-rate GST model is envisaged whereby the tax rate will be converged to one standardised rate of 16% on goods and services within three years of implementation.

A reform like GST is obvious to attract a lot of deliberation and discussion at all stages of planning and implementation and, as such, is a time-consuming exercise. Implementation of GST also entails constitutional amendments as to the rights and powers of the central and state Governments to levy different taxes.

SWACHH BHARAT CESS

This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

CENTRAL SALES TAX (CST)

Interstate sales liable to Central Sales Tax (CST), presently CST is applicable at 2 percent.

EXCISE DUTY

Excise duty is a tax on the manufacture of goods in India. It is levied by the Government at specified rates. The CENVAT scheme is designed to reduce the cascading effect of indirect taxes on final products. This is a more liberal and extensive scheme than the erstwhile MODVAT scheme was, with most goods brought within its ambit and no declarations or statutory records prescribed.

The Scheme allows instant CENVAT Credit to be taken of duties such as Excise Duty, SED, ADE and CVD paid on inputs and capital goods received in a factory for the manufacture of any dutiable final product. A list of credential goods as well as services, which would attract CENVAT credit, has been listed in the provisions. This credit can be utilized to pay Excise duty on any final product. However, CENVAT credit shall not be allowed on such quantity of inputs or input services, which is used in the manufacture of exempted goods or exempted services except in the manner specified.

Major amendments made under the Finance Act 2015 for Excise Duty

- Section 11A has been inter alia amended so as to amend the provision relating to relevant date to provide definition of relevant date in respect of cases where a return is not filed on the due date and cases where only interest is required to be recovered.
- Suitable amendments have been made under section 11AC to rationalize penalty in various cases.
- No cases can be accepted by the Settlement commission for fresh adjudication or decision which is referred back by any adjudicating authority.
- Residual Penalty increased from Rs. 2,000/- to Rs. 5,000/-.
- Clarification issued defining the scope of the term “place of removal” in case of export of goods by Manufacturers exporters as well as Merchants Exporters.

Notifications

- The standard ad valorem rate of duty of excise has been increased from 12% to 12.5%.
- Education Cess and Secondary & Higher Education Cess to be exempted.
- Exemption withdrawn on Solar Water heater and system.
- Excise duty exempted on parts including sub parts, components and accessories for use in manufacture of tablet computer.

No Change in rate of duty for Chapters 1-3, 5-19, 26, 28-32, 34-38, 40-63, 65-71, 75-83, 86,88-89, 91-96.

- Illustrative Changes in basic duty rates:

Sr. No.	Description	Chapter No.	New rate (%)	Old Rate (%)
1.	waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	220210	18	12
2.	High Speed Diesel	27101930	14+Rs. 15	14+ Rs. 5
3.	Mobile Handsets		12.5	6
4.	Wafers for IC module, input for use in manufacture of LED driver and MPCB		6	12
5.	Chassis for Ambulance		12.5	24

Notification No 6 - 8/2015-CE (NT): Amendments in Cenvat Credit Rules, 2004 and Central Excise Rules, 2002

- Direct dispatch of goods to registered dealer's/ registered importer's customers without first bringing them to the dealer's / importer's registered premises subject to the conditions specified therein,
- Direct dispatch of inputs and capital goods to job worker without first bringing them to the manufacturer's /output service provider's premises subject to the conditions specified therein,
- Definition of "export goods" (rule 5 of CCR refers) and "export" (rule 18 of CER refers) have been amended,
- Application of certain provisions of these rules, presently applicable to the registered dealers, to apply to the registered importers also.
- Provide for issue of digitally signed invoices and preservation of records in electronic form by a manufacturer.
- Increase the time limit for taking CENVAT credit on inputs and input services from the present six months to one year,
- Increase the time limit for return of Capital Goods from a job worker from the present six months to two years,
- Make provision relating to reversal for CENVAT Credit under rule 6, presently applicable to exempt goods and services, applicable to non-excisable goods also,

- Provide for recovery of CENVAT Credit taken but NOT utilized. Further, the manner of determining utilization of Credit is also being provided in the rule itself.
- Registration process in Central excise is being simplified to ensure that registration is granted within two working days of the receipt of a duly completed application form.

SERVICE TAX

Service tax is levied on specified taxable services identified under chapter 5 of the Finance Act, 1994 (the Act). A number of services have been brought under the Service Tax net. Presently, more than 120 services are covered under this levy. The existing rate of service tax is 14%.

Effective date to be notified by the Government:

- Swachh Bharat Cess to be levied @ 2% on all or any of the value of taxable service.

- Following Changes have been proposed in the Negative List:
  - Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.
  - Services by way of carrying out any process in relation to preparation of alcoholic liquor for human consumption have been excluded from the negative list. Accordingly Service Tax shall be levied on contract manufacturing/job work for production of potable liquor used for human consumption. Simultaneous amendment has been made in the definition.
  - Earlier 'support services' provided by the Government or Local Authority to business entity was excluded from the negative list which has been replaced by 'any service' thereby expanding the scope of taxable service. Definition of support service has been accordingly omitted.
  - An explanation is being added in entry (i) of section 66D to specifically state that the activities undertaken by chit fund foremen in relation to chit, and lottery distributors and selling agents, in relation to lotteries are not covered by the Negative List.

Effective from the date of enactment of Finance Bill:

- Definition of Government to be inserted from the date of enactment of Finance Bill.
- Definition of consideration expanded under explanation to section 67 to include any 'reimbursable expenditure or cost' incurred in the course of providing the service subject to conditions.
- Section 73 is being amended in the following manner:
  - a new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73; and
  - Sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records is being omitted.
- Penalty provisions under section 76 and 78 have been amended to provide a reduced rate of penalty.
- Section 80 which provided for waiver of penalty in certain circumstances would be omitted.

Notifications

Notification No. 04/2015-ST: Addition of Land Customs Station in Notification 31/2012-ST (Effective 1 April 2015)

Vide above notification Land Customs Station has been added and thereby benefit of service tax exemption has been granted for services provided to an exporter of goods by goods transport agency from place of removal/container freight station/inland container depot till land customs station.

Notification No. 05/2015-ST: Amendment in Service Tax Rules

Effective 1 March 2015

- In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner.

  For the said purpose definition of 'aggregator' and 'brand name or trade name' has been inserted under Rule 2(1) which reads as follows:

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

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

- Rule 4 is being amended to provide that the CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration under service tax. Further it has also been prescribed that henceforth registration for single premises shall be granted within two days from filing of the application.
- A provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC.

Effective 1 April 2015

- Service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company has been brought to tax under reverse charge mechanism.
- Service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent has been brought to tax under reverse charge mechanism.

Effective from date to be notified by government

- Option provided to air travel agents to pay service tax has been proposed to increased to 0.7 per cent and 1.4 per cent of the basic fare in case of domestic and International travel respectively.

- Residual category in case of Insurers carrying on life insurance business having option to pay service tax has been proposed to increase to 3.5 per cent and 1.75 per cent for first and subsequent years respectively.
- Optional rate of service tax in case of person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing is as follows:-

Amount	Service Tax rate on Gross Amount
Upto Rs. 1 one lakh	0.14 per cent (Min. Rs. 35)
Exceeding Rs. 1 one lakh but up to Rs. 10 lakhs	Rs. 140 and 0.07 per cent
Exceeding Rs. 10 lakhs	Rs. 770 and 0.014 per cent (Max. Rs. 7,000/-)

- Optional rate in case of lottery schemes have been increased to Rs. 8,200/- where the guaranteed prize pay out is more than 80 per cent and for rest increased to Rs. 12,800/-.

Notification No. 06/2015-ST: Amendments in mega exemption notification (Effective 1 April 2015)

- Any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services.
- Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn.
- Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is up to Rupees one lakh for a performance.
- Exemptions are being withdrawn on the following services.
  - services provided by a mutual fund agent to a mutual fund or assets management company,
  - distributor to a mutual fund or AMC,
  - Selling or marketing agent of lottery ticket to a distributor.
- Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted.
- Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted.
- Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables is being exempted.
- Service by way of right to admission to,- (to be effective from notified date)
  - Exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.
  - Recognized sporting events.
  - Concerts, pageants, award functions, musical performances or sporting events not covered above, where the consideration for such admission is upto Rs. 500 per person.

Notification No.07/2015-ST: Amendment in Reverse Charge Mechanism (Effective 1 April 2015)

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

- Service Tax in respect of mutual fund agent and mutual fund distributor services shall be fully paid by the assets management company or, as the case may be, by the mutual fund receiving such services.
- In respect of selling or marketing agents of lottery, Service Tax shall be fully paid by the distributor of lottery or selling agent.

Notification No. 08/2015-ST: Amendment in Abatement Notification (Effective 1 April 2015)

- Uniform abatement has been prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.
- Abatement at the rate of 60 per cent has been provided in respect of Transport of passengers by air, with or without accompanied belongings in Economy class and for other class the abatement has been provided at the rate of 40 per cent.
- Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. However they would be entitled to take Cenvat Credit.

Notification No. 09/2015-ST: Resident firm can file application for Advance Ruling

'Resident firms' have been considered to be specified person for the purpose of Advance Ruling. For the said purpose Firm shall have the meaning assigned to it in Indian Partnership Act and shall include:

- Limited Liability Partnership other than those which has company as its partner.
- Sole Proprietorship
- One Person Company

Further resident is to be construed as defined under the Income Tax Act in so far as it applies to a resident firm.

OCTROI / ENTRY TAX

Certain states levy octroi/entry tax on the entry of goods into specified local areas for use, consumption or sale. The said taxes are levied under local and municipal legislation.

STAMP DUTY

Stamp Duty is essentially a tax levied on instruments evidencing specified commercial transactions like conveyance and mortgage. For instance, stamp duty may arise on documents showing the transfer of movable and immovable property and the issue and transfer of shares.

Stamp duty rates vary depending on the applicable stamp duty legislation. While most states have adopted the parent legislation, i.e. the Indian Stamp Act, 1899 for stamp duty levy purposes; certain states such as Maharashtra and Gujarat have enacted their individual legislation. Taxable transactions include: motor vehicle registration & transfer, insurance policies, leases & mortgages, hire purchase agreements & transfer of property(such as businesses, real estate or shares).

GOODS AND SERVICE TAX

The Goods and Service Tax (GST) is a tax likely to be implemented in India, from 1st April 2016. GST is proposed to be a comprehensive indirect tax to be levied on manufacture, sale and consumption of goods as well as services at the national level. It will substitute all indirect taxes levied on goods and services by the Central

and State Governments in India as of now. It is aimed at being comprehensive for most goods and services.

OBJECTIVES OF GST:- One of the main objective of Goods & Service Tax(GST) would be to eliminate the cascading effects of taxes on production and distribution cost of goods and services. The exclusion of cascading effects i.e. tax on tax will significantly improve the competitiveness of original goods and services in market which leads to beneficial impact to the GDP growth of the country. It is felt that GST would serve a superior reason to achieve the objective of streamlining indirect tax regime in India which can remove cascading effects in supply chain till the level of final consumers.

BENEFITS OF GST:-

- GST will end cascading effects:- This will be the major contribution of GST for the business and commerce. At present, there are different state level and centre level indirect tax levies that are compulsory one after another on the supply chain till the time of its final consumption.

- Growth of Revenue in States and Union:- It is expected that the introduction of GST will increase the tax base but lowers down the tax rates and also removes the multiple point taxation. This will lead to higher amount of revenue to both the states and the union.

- Reduces transaction costs and unnecessary wastages:- If government works in an efficient mode, it may be also possible that a single registration and a single compliance will suffice for both SGST and CGST provided government produces effective IT infrastructure and integration of states level with the union.

- Eliminates the multiplicity of taxation:- One of the great advantages that a taxpayer can expect from GST is elimination of multiplicity of taxation. The reduction in the number of taxation applicable in a chain of transaction will help to reduce the paper work and clean up the current mess that is brought by existing indirect taxation laws.

- One Point Single Tax :- Another feature that GST will hold is it will be 'one point single taxation'. This also gives a lot of comforts and confidence to business community that they would focus on business rather than worrying about their taxation that may crop at later stages. This will help the business community to decide their supply chain, pricing modalities and in the long run helps the consumers being goods competitive as price will no longer be the function of tax components but function of sheer business intelligence and innovation.

- Reduces average tax burdens:- Under GST mechanism, the cost of tax that consumers have to bear will be certain and it is expected that GST would reduce the average tax burdens on the consumers.

- Reduces the corruption:- It is one of the major problems that India is overwhelmed with. We cannot expect anything substantial unless there exists a political will to root it out. This will be a step towards corruption free Indian Revenue Services.

- Present CST will be removed and need not to be paid. At present there is no input tax credit available for CST.

- There are many indirect taxes in state and central level currently, which will be included by GST. i.e. you need to pay a single GST instead of all of them.

- Uniformity of tax rates across the states.
- Ensure better compliance due to aggregate tax rate reduces.
- By reducing the tax burden the competitiveness of Indian products in international market is expected to increase and there by development of the nation.
- Prices of goods are expected to reduce in the long run as the benefits of less tax burden would be passed on to the consumer.

WORKS CONTRACT TAX

The works contract tax is levied on the transfer of property in goods involved in the course of the execution of a works contract. Contracts for the construction of bridges, power plants, etc. or for repairs, erection, etc. could attract the works contract tax. . The rate of works contract is currently 4 per cent .

Basically the tax is levied only on the value of the material supplied under the contract and thus the value of labour and services are allowed as deductions. In addition, various other deductions are also available and these vary from one state to another. Most states also provide for a scheme of composition whereby, the works contract tax is levied at a fixed rate on the entire value of the contract without any deductions. The rate of tax is either equivalent to the rate of the sales tax on similar goods or in some cases a specific rate of tax is prescribed, regardless of the nature of goods supplied. Further, the law generally requires the contractee to deduct the works contract tax at source from all payments made to the contractor. The rate of such deduction varies from one state to another.

RESEARCH AND DEVELOPMENT CESS

Under the Research and Development Cess Act, 1986 cess is levied by the central government, at a rate of 5 per cent on the import of technology into India. Such cess is required to be paid by the importer on payments made for such imports.

The term 'technology' is defined under the above-mentioned legislation to mean any special or technical knowledge or any special service required for any purpose whatsoever by an industrial concern under any foreign collaboration, and includes designs, drawings, publications and deputation of technical personnel.

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