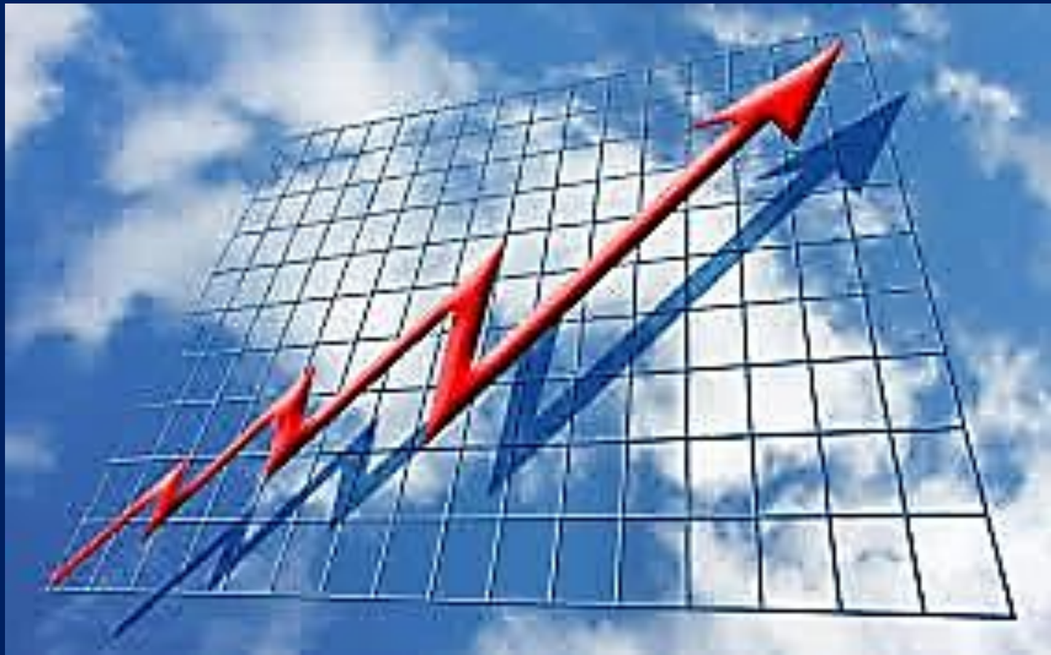
India Budget



2016-17

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Contents

Disclaimer

Foreword

The Finance Minister ('FM') presented his third Budget in the Parliament in the challenging backdrop of the global economic turmoil characterized by uncertainty, low growth and turbulent financial markets.

India occupies a pole position to experience sustainable growth owing to favourable macro-economic factors and demographics, rising income, low household debt, greater urbanization and steady economic growth.

The International Monetary Fund ('IMF') has projected the Gross Domestic Product ('GDP') growth for India at 7.5% for FY 2016-17, against the backdrop of estimated reduction in the global economic growth from 3.4% in FY 2014 to 3.1% in FY 2015. From a global perspective, the Indian economy is resilient and is a bulwark of stability on account of controlled fiscal and current account deficits, as evidenced by the negative Wholesale Price Index ('WPI') of -2.8% and the reduction in Consumer Price Index ('CPI') from 5.9% in FY 2014-15 to 4.9% in FY 2015-16. Further, adherence to the fiscal deficit target of 3.5% is a sign of the Government's commitment to fiscal discipline.

The edifice of Budget 2016-17 stands on the strong foundations of comprehensive measures for agricultural and rural development, emphasis on education and skill development, infrastructure development, financial sector reforms, liberalization of foreign investment norms, social reform measures, ease of doing business and transition to a digital environment.

In the area of taxation, some welcome measures include incentivising domestic value addition to boost ‘Make in India’, relief for small taxpayers and simplification and rationalization of the tax system to create a non-adversarial tax regime.

However, the FM has only partially delivered on the Budget expectations and much remains to be done, especially on the taxation front. Some of the dampeners include minor tinkering with the corporate tax rates while phasing out various incentives, ‘triple’ taxation of dividend, taxation of retirement benefits and introduction of three new types of cesses in the past six months. There is also some discontent regarding lack of bold measures to tackle the issue of retrospective taxation.

Overall, Budget 2016-17 appears to be focused on the welfare of farmers, rural development, small taxpayers, job creation and a better quality of life for all Indian citizens.

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29 February 2016

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Key policy announcements

Key policy announcements

Budget 2016-17 is founded on the theme of 'Transform India' and is based on nine distinct pillars. This section summarizes significant policy proposals announced in the Budget.

- ***Fiscal discipline***
  - Committee to be set up to review the implementation of the Financial Responsibility and Budget Management Act.
  - Fiscal deficit will now be set as a target range rather than a fixed number as earlier.
- ***Infrastructure and investment***
  - Total outlay of INR 2,180,000 million proposed for roads and railways.
  - Bill to be introduced for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts and guidelines to be issued for renegotiation of PPP Concession Agreements.
  - Dedicated fund to be set up by LIC to provide credit enhancement to infrastructure projects.
  - New credit rating system to be set up for infrastructure projects.
- ***Relaxation of FDI policy***
  - Investment in insurance and pension sectors to be allowed upto 49% under automatic route.

- 100% Investment in asset reconstruction companies to be permitted under automatic route.
- Investment by foreign entities in Indian bourses to be enhanced from 5% to 15%, at par with domestic institutions.
- Investment limit by FPIs in listed Central public sector enterprises (other than banks) to be increased to 49%.
- 100% FDI to be allowed in marketing of food products produced and manufactured in India under the FIPB approval route.
- FDI to be allowed in additional activities beyond the 18 NBFC activities specified under the automatic route.
- Hybrid instruments to be included among eligible FDI instruments.

➢ ***Financial sector***

- Comprehensive code on resolution of bankruptcy situations of financial firms to be introduced.
- New derivative products to be developed by SEBI in the commodity derivatives market.
- Funds of INR 250,000 million to be allocated for recapitalisation of PSBs.
- Nationwide roll out of ATMs and Micro ATMs in post offices over the next three years.

- Amendments to be made to RBI Act, SEBI Act and SARFAESI Act as part of the financial sector reforms.

- ***Governance and ease of doing business***

  - Bill to be introduced for targeted delivery of financial and other subsidies, benefits and services by giving statutory force to Aadhaar.

  - Amendments to be made to the Companies Act, 2013 to improve ease of doing business and to enable registration of companies in one day.

- ***Education, skills and job creation***

  - Regulatory architecture to be provided to 10 public and private institutions to enable them to emerge as world-class teaching and research institutions.

  - Higher Education Financing Agency to be set up to leverage funds from the market and supplement them with donations and CSR contributions.

  - Entrepreneurship education and training to be provided through massive open online courses.

  - Model Shops and Establishments Bill to offer an option to shops to remain open on all seven days of the week on a voluntary basis.

- ***Agriculture and farmers' welfare***
  - Government will renew its thrust in the farm and non-farm sectors to double the income of farmers by 2022.
  - Programme for sustainable management of groundwater resources prepared.
  - Unified Agriculture Marketing Scheme for deploying a common e-market platform in 585 regulated wholesale markets.
  - Amendments to be made to Agricultural Produce Marketing Committee Acts of States, as a prerequisite to join the e-market platform.
  - Provision of interest subvention of INR 150,000 million to be made to reduce the burden of loan repayment on farmers.
- ***Rural sector***
  - Digital Literacy Mission Scheme to be launched to spread digital literacy among 60 million households within three years.
  - Modernisation of land records to be undertaken through National Land Record Modernisation Programme.

- 100% Electrification of villages to be achieved by 2018.
- Funds of INR 385,000 million to be allocated to MGNREGS to boost employment generation.

➢ ***Social sector***

- Health protection scheme for economically weak families to provide health cover of upto INR 100,000 per family, with additional amount of INR 30,000 for senior citizens.
- An amount of INR 20,000 million to be allocated to provide LPG connections in the name of women members of poor households.
- Funds to be made available through the National Health Mission to provide dialysis services in all district hospitals through PPP mode.

Tax proposals

Direct taxes

This section summarises significant direct tax proposals announced in Budget 2016-17. These proposals are subject to enactment of Finance Bill, 2016. Further, most direct tax proposals in the Finance Bill, 2016 are effective from FY 2016-17 unless otherwise specifically stated. References to sections are to sections in the Income-tax Act, 1961 ('the I.T. Act') unless otherwise stated.

- ***Tax rates***

  The basic rates for FY 2016-17 are as under:

  - Individual/HUF/AOP/BOI
    - The basic slab rates and education cess remain unchanged. However, the rate of surcharge will be increased to 15% from the existing rate of 12%, if the total income exceeds INR 10 million (marginal relief available).
    - Rebate under section 87A will be increased to INR 5,000.
  - Firms including Limited Liability Partnership ('LLP')
    - No change proposed in the basic rates of tax, surcharge and education cess.

- Domestic companies
  - The rates of tax will be as under:
    - For newly set up companies incorporated on or after 1 March 2016 and engaged in the business of manufacture, the basic rate of tax will be 25% without any deductions and relief (except deduction for emoluments of new workmen), at the option of the company.
    - For companies having turnover or gross receipts in FY 2014-15 not exceeding INR 50 million, the basic rate of tax will be 29%.
    - Companies not falling under any of the above categories will be taxed at the basic rate of 30%.
  - No change proposed in the rates of surcharge and education cess.
- Foreign company
  - No change proposed in the basic rates of tax, surcharge and education cess.
- Minimum Alternate Tax (‘MAT’) or Alternate Minimum Tax (‘AMT’).
  - The basic rate of tax for MAT and AMT remains unchanged at 18.5%.

- Dividend Distribution tax ('DDT')
    - The basic rate of DDT remains unchanged at 15%.
- **Taxation of dividend income exceeding INR 1 million**
    - Dividend in excess of INR 1 million to be taxed in the case of an individual, HUF or firm resident in India at 10% on gross basis.
    - This provision will amount to the same income being taxed thrice (corporate tax, DDT and proposed tax of 10%).
    - This provision discriminates between non-residents ('NR') and residents. Further, it will adversely affect promoters holding shares directly and may lead to disputes on the question of taxability of dividend in case of taxable non business trusts who receive dividend exceeding INR 1 million, even if the share of an individual beneficiary is less than INR 1 million.
    - Public charitable trusts registered under section 12AA which receive dividend exceeding INR 1 million would continue to be exempt.

➢ ***Place of Effective Management ('POEM') and General Anti- Avoidance Rule ('GAAR')***

- Applicability of POEM based residency test will be deferred by one year and will be applicable from 1 April 2016, while GAAR will be applicable from 1 April 2017.

- ***Provisions relating to Non-Residents***

  - **Equalisation levy to tax B2B e-commerce transactions**

    - Levy at 6% of gross amount of consideration for specified services received or receivable by a NR, (who does not have a PE in India) from

      - Residents in India carrying on business or profession, or
      - NR having a Permanent Establishment (‘PE’) in India.

    - No levy will be charged if the NR providing the specified service has a PE in India and the specified service is connected with such PE or where total consideration received/receivable by the NR does not exceed INR 0.1 million (in any FY) or where services are not for the purpose of carrying on business or profession.
    - Income on which Equalisation levy is charged will be exempt from income tax under section 10.
    - The payer of the consideration subject to Equalisation levy will be required to deduct the Equalisation levy from the amount payable to a NR; if no deduction is made, the entire consideration will be disallowed.
    - Procedure for collection of levy, interest, penalty and prosecution are in *pari-materia* with withholding tax provisions under the I.T. Act.

- The proposed amendment will be effective from a date to be notified by the Government of India.

- **Tax incentives to International Financial Services Centre ('IFSC')**

  - Exemption from Long Term Capital Gains ('LTCG') under section 10(38) of the I.T. Act to be extended to transactions undertaken in foreign currency on a recognised stock exchange by an entity located in an IFSC, even if no STT is paid on such transactions.
  - MAT will be applicable at a beneficial tax rate of 9% to companies located in an IFSC, if income is derived solely in foreign exchange.
  - No tax will be levied on distribution of profits by a company located in an IFSC and deriving income solely in foreign exchange.
  - The proposed amendment will be effective from 1 June 2016.

- **Applicability of MAT on foreign companies for the period prior to 1 April 2015**

  - It has been clarified that MAT will not be applicable to the following companies with effect from FY 2000-01:

    - A foreign company, resident of a country or specified territory with which India has a Double Taxation Avoidance Agreement ('DTAA') and such company does not have a PE in India, or

- If such company is a resident of a country with which India does not have a DTAA and such company is not required to seek registration under Companies Act in India.

- **Rationalisation of withholding tax provisions for Categories I and II Alternative Investment Funds ('AIFs')**

  - Income of the fund (not being in the nature of business income) is exempt in the hands of the fund but income received by the investor from the investment fund (other than specified income which is taxed at the fund level) will be taxable in the hands of investor in the same manner as if the investment were made directly by investor.
  - Section 194LBB to be amended to provide that the person responsible for making the payment to the investor shall deduct income-tax at the rate of 10% where the payee is a tax resident and at the rates in force when the payee is a NR.
  - A certificate under section 197 of the I.T. Act for deduction of tax at a lower rate may be obtained under section 194LBB.
  - The proposed amendment will be effective from 1 June 2016.

- **Country by Country ('CbC') reporting**

  - Implementation of a three tier structure for transfer pricing documentation and BEPS recommendation of CbC reporting to be incorporated:

    - Local file – containing material transactions of the local taxpayer
    - Master file – containing standardised information relevant for all multinational enterprises (MNE) in the group
    - CbC reporting – containing information about global allocation of MNE group's income and taxes, along with the location of economic activity within the MNE group

  - Reporting of information in the prescribed formats, if consolidated revenue of the MNE group exceeds the notified threshold.

- **Exemption of income of foreign company accruing from storage and sale of crude oil**

  - Income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India will be exempt provided that such storage and sale by the foreign company is pursuant to an agreement entered into by the Government of India/approved and notified by the Government of India.

- The proposed amendment will be effective retrospectively from FY 2015-16.

- **Modification in conditions of special taxation regime for offshore funds**

  - Certain relaxations were conferred on offshore ‘eligible’ funds in considering ‘business connection’ in India, being funds established outside India in a country notified by the Government of India.
  - The existing condition of the fund not controlling and managing any business in India or from India has been further diluted to include only activities carried on in India.

- **Exemption from the requirement to furnish Permanent Account Number (‘PAN’)**

  - Tax withholding at a higher rate in the absence of PAN will not apply to NR or foreign companies for-

    - Payment of interest on long-term bonds referred to in section sec 194LC; and
    - Any other payment, subject to conditions, as may be prescribed

  - The proposed amendment will be effective from 1 June 2016.

- ***Tax incentives for Start-ups***

  - 100% deduction of the profits will be available to an eligible certified Start-up which has been incorporated after 31 March 2016 and before 1 April 2019 and is engaged in the business of innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property. Such deduction would be available for any three consecutive FYs out of five years post the date of incorporation of the start-up.

  - A new section 54EE will be introduced to provide exemption from capital gains tax, if the LTCG is invested after 31 March 2016 and upto 31 March 2019 in units of a fund, notified by the Government of India, upto INR 5 million.

  - Section 54GB will be amended to provide an exemption to the LTCG, if the LTCG is invested in subscription of shares of a company which qualifies as an eligible Start-up, subject to the following conditions:

    - An individual or HUF should hold more than 50% shares of the company, and

    - Such company utilises the amount invested in its shares to purchase a new asset (which shall include computers or computer software if the Start-up is certified as a technology driven Start-up), before the due date of filing of return of income by the investor.

- ***Taxation of income from patents***

  - A new section 115BBF will be introduced to tax gross royalty income from a patent developed and registered in India at a concessional rate of 10%; however, MAT provisions will apply.
  - This section will apply to a person resident in India, and who is the true and first inventor.

- ***Tax reliefs and incentives***

  - **Measures to phase out deductions**

    - Proposed phase out plan of incentives (profit linked deductions/weighted deductions) available under the I.T. Act will be as under:

Particulars	Proposed amendments
Sec 10AA – Newly established units in SEZ	No deduction will be available w.e.f 1 April 2020
Sec 35AC – Expenditure on eligible projects/schemes for promoting social and economic welfare	No deduction will be available w.e.f 1 April 2017

Sec 35CCD - Expenditure on skill development project	Deduction will be restricted to 100% w.e.f 1 April 2020
Deduction in respect of profits derived from a) development, operation and maintenance of an infrastructure facility (Sec 80-IA) (b) development of SEZ (Sec 80-IAB) (c) production of mineral oil and natural gas [Sec 80-IB(9)]	No deduction will be available if the specified activity commences on or after 1 April 2017

- Proposed phase out plan of incentives (accelerated depreciation/weighted deductions) available under the I.T. Act will be as under:

Particulars	**Proposed amendment**
Sec 32 – Accelerated depreciation	Highest rate of depreciation is restricted to 40% w.e.f 1 April 2017

Sec 35(1)(ii) - Expenditure on scientific research	Weighted deduction will be restricted to 150% from 1 April 2017 to 31 March 2020 and 100% thereafter
Sec 35(1)(iia) - Expenditure on scientific research	Deduction will be restricted to 100% w.e.f 1 April 2017
Sec 35(1)(iii) - Expenditure on scientific research	Deduction will be restricted to 100% w.e.f 1 April 2017
Sec 35(2AA) - Expenditure on scientific research	Weighted deduction will be restricted to 150% w.e.f 1 April 2017 to 31 March 2020 and 100% thereafter
Sec 35(2AB) - Expenditure on scientific research	
Sec 35AD- Deduction in respect of specified business	In case of a cold chain facility, warehousing facility for storage of agricultural produce, hospital, affordable housing project, production of fertilizers, deduction will be restricted to 100% of capital expenditure w.e.f. 1 April 2017
Sec 35CCC - Expenditure on notified agricultural extension projects	Deduction will be restricted to 100% w.e.f. 1 April 2017

- **Investment allowance**

  - For availing investment allowance under section 32AC(1A), the acquisition and installation of the plant and machinery need not necessarily be in the same year. Installation of acquired plant and machinery may be made by 31 March 2017 to avail the benefit of investment allowance of 15%. In such cases, the deduction will be allowed in the year of installation.
  - The proposed amendment will be applicable to FY 2015-16 and FY 2016-17.

- **Additional depreciation**

  - Deduction of additional depreciation of 20% will be extended to taxpayers engaged in the business of transmission of power.

- **Tax incentive for employment generation**

  - Deduction of 30% of wages paid to new regular workmen in a factory available under section 80JJAA, will be extended to every business to which the requirement of tax audit is applicable.
  - The deduction will be available in respect of emoluments of additional employees whose total emoluments are upto INR 25,000 per month, provided that an employee is employed for minimum 240 days.

- Deduction will be allowed for 30% of emoluments to all employees in the first year in case of a new business.

- Benefit under section 80GG for deduction of rent paid will be raised to INR 5,000 per month.

- ***Dividend Distribution Tax ('DDT') on distribution made by an SPV to Business trust***

  - Exemption from levy of DDT on distributions made by a Special Purpose Vehicle ('SPV') to REITs or InvITs (holding prescribed shareholdings); dividend received by REITs or InvITs and their investors will be exempt from tax.
  - Exemption from levy of DDT will apply only in respect of dividends paid out of current income after the date of purchase of shares of the SPV by REITs or InvITs.
  - The proposed amendment is effective from 1 June 2016.

- ***Amortisation of spectrum fees***

  - New section 35ABA to be inserted to provide for amortisation of the expenditure actually paid to acquire the right to use radio frequency spectrum for telecommunication services in equal instalments over the period of use of spectrum.

- Disallowance under section 14A read with rule 8D will be calculated at 1% of average monthly value of investments yielding exempt income but will be restricted to the actual expenditure, as per the FM's speech.

- ***Increase in threshold limit for presumptive taxation scheme***

  - Existing threshold of INR 10 million for availing the benefit of presumptive taxation regime applicable to 'eligible business' whose deemed income is computed at the rate of 8% of the total turnover or gross receipts is revised to INR 20 million.
  - Expenditure in the nature of salary, remuneration, interest paid to a partner under section 40(b) will be excluded while computing the income.
  - If such business opts out of presumptive taxation scheme, then such business shall be disqualified from adopting the scheme for the next five years.
  - A similar amendment has not been made under section 44AB to increase the limit for tax audit for business having turnover of INR 20 million or more.
  - Such business opting for presumptive taxation will have to pay advance tax of the whole amount in one instalment on or before 15 March of the FY.

- ***Presumptive taxation scheme for professionals***

  - New section 44ADA to be introduced to provide the option of presumptive taxation to resident professionals whose gross receipts do not exceed INR 5 million in a year.
  - 50% of such gross receipts to be deemed as profits and gains chargeable to tax.
  - Expenditure and deductions under section 30 to 38 will not be allowed. Depreciation shall be deemed to have been allowed and written down value of assets calculated accordingly.
  - Such professionals opting for presumptive taxation will not be required to maintain books of account or get the accounts audited under section 44AB.
  - Any claim of profits and gains lower than the threshold limit of deemed income will have to be supported by books of account and audit requirements will have to be complied with.

- ***Increase in threshold limit for audit for income from profession***

  Threshold limit for applicability of compulsory audit of books of account for income from profession increased to INR 5 million from the existing limit of INR 2.5 million.

Taxation of non-compete fees and exclusivity rights in case of professionals

- Non-compete fees received or receivable for not carrying on any profession will be chargeable to tax as 'profits and gains of business or profession'.
- Consideration for transfer of rights to carry on any profession will be charged as 'capital gains'. The cost of acquisition and cost of improvement will be considered as 'NIL' for the purpose of such capital gains.

Conversion of a company into LLP

- In addition to the existing conditions, for providing tax neutrality to conversion of a company into LLP, the total value of the assets in the books of account of the company in any of the three prior years in which the conversion takes place, should not exceed INR 50 million.

Tax on distributed income to shareholders in case of buy-back of shares

- It is to be clarified that existing provision for taxation of buyback of shares will apply to any buyback of unlisted shares in accordance with Companies Act.
- Rules to be prescribed to provide the manner of computation of amount of buyback including tax neutral reorganisation and payments in tranches.

- ***Rationalization of Section 50C***

  - Where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are different, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.

  - This provision will apply only in a case where the amount of consideration or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

- ***Tax treatment of recognised Provident Funds ('PF'), approved Superannuation Funds ('SAF') and National Pension Scheme ('NPS')***

  - In case of contributions made on or after 1 April 2016 by an employee participating in a recognised PF or approved SAF, 60% of the accumulated balance on such withdrawal will be chargeable to tax, unless such balance is transferred to a pension scheme referred to in section 80CCD and notified by the Government of India.

  - In case of recognised PF, this provision will not apply to an employee whose salary is less than INR 15,000 per month.

  - In case of any payment from NPS Trust to an employee on account of closure or his opting out of the pension scheme referred to in section 80CCD and notified by the Government of India, 60% of the total amount will be chargeable to tax.

- The whole amount received by the nominee on death of the taxpayer will be exempt from tax.
- Exemption is granted to one-time portability from an approved SAF to the pension scheme referred to in section 80CCD and notified by the Government of India.
- Limit of the employer's tax free contribution to an approved SAF is increased to INR 150,000.
- Employer's contribution to recognised PF in excess of 12% of salary or INR 150,000, whichever is less, will be chargeable to tax.
- The amendment indicates a shift to an EET regime of taxation, and as per the FM's speech, towards a 'pensioned society'.

➢ ***House property***

- Deduction of interest on the capital borrowed for acquisition or construction of house property which is claimed as self-occupied, to be allowed if the acquisition or construction is completed within five years from the end of the FY in which the capital was borrowed.

➢ ***Income from housing project***

- 100% deduction of profits is proposed for taxpayers engaged in developing and building affordable housing projects, if the housing project is approved by the competent authority after 1 June 2016 but before 1 April 2019 and if the project is completed within 3 years from the date of approval, subject to certain conditions.

- ***Interest on housing loan***

  - An additional deduction of INR 50,000 will be available in respect of interest on loan taken for purchase of new residential house property from any financial institution, if

    - the value of house property is less than INR 5 million;
    - the loan upto INR 3.5 million is sanctioned during FY 2016-17; and
    - the taxpayer does not own any residential house property when the loan is sanctioned.

- ***Withholding taxes***

  - Tax Collection at Source (‘TCS’) on sale of vehicles, goods and services.
  - The seller will be required to collect tax at 1% of the value of the goods or services for consideration paid by the purchaser as under:

    - In case of sale of motor vehicle of value exceeding INR 1 million

    - In case of sale in cash of any goods (other than bullion and jewellery) or services exceeding INR 200,000
    - The proposed amendment will be effective from 1 June 2016

- Withholding tax provisions have been rationalised with revisions in rates and threshold limits.

➢ ***Revision in rate of Securities Transaction tax ('STT')***

- The STT on sale of an option in securities will be increased to 0.05% of option premium from the existing 0.017%.
- The proposed amendment is effective from 1 June 2016.

➢ ***Carry forward of loss under section 73A***

- Amendment to section 80 to carry forward loss under section 73A (i.e. for specified business) only if the same is reflected in the return of income filed within the prescribed time. This will bring consistency in the limiting provisions dealing with carry forward of losses.
- The proposed amendment will be effective from 1 June 2016.

➢ ***Direct Tax Dispute Resolution Scheme, 2016***

- In order to reduce the huge backlog of cases, a new scheme for resolution of disputes will be introduced. The scheme relates to 'tax arrears' in respect of matters pending before the first level appellate authority and 'specified taxes' in respect of pending matters relating to retrospective amendments, as on 29 February 2016.

- Tax arrears

    - If the declarant pays the entire disputed tax demand plus interest up to the date of the scrutiny order, it will be deemed that the appeal has been withdrawn and the taxpayer will get immunity from penalty and prosecution.

    - If the disputed tax liability exceeds INR 1 million, 25% of (minimum) penalty will be payable in addition to tax and interest.

    - In case of pending appeals against a penalty order, 25% of (minimum) penalty will be payable in addition to tax and interest payable.

- Specified taxes
  - The taxpayer is required to pay the amount of disputed tax and will get immunity from interest, penalty and prosecution.
  - The taxpayer has to withdraw the relevant appeal/notices/claims filed with any authority as may be applicable.
- The proposed amendment will be effective from 1 June 2016.

➢ ***The Income Declaration Scheme, 2016***

- A new scheme will be introduced to provide an opportunity to declare domestic undisclosed income.
- Tax at 30% will be payable along with surcharge at 7.5% and penalty at 7.5%.
- Certain cases will not be eligible for the scheme e.g. where notices for scrutiny or search and seizure or block scrutiny case have been issued, or where the case is covered by the Black Money Act, 2015.
- Exemption to be provided from applicability of Wealth-tax Act, immunity from scrutiny and prosecution under the I.T. Act and Wealth-tax Act and prosecution under the Benami Transactions (Prohibition) Act.
- The scheme is to be made applicable to domestic undisclosed income up to FY 2015-16.

- The proposed amendment is effective from 1 June 2016 and will remain open till such date as may be notified.

- ***Deduction for provision of bad and doubtful debts of Non-Banking Financial Companies (‘NBFCs’)***

  - Benefit of deduction for the provision of bad and doubtful debts up to 5% of the gross income will be extended to NBFCs under section 36(1)(viia)

- ***Securitisation trust***

  - A Securitisation trust will be treated as a pass through entity where income of the trust is to be exempt but interest to be taxable in the hands of the investors at 25% in case of resident individuals and HUFs and 30% for others, while payments to NR will be taxed at the rates in force.
  - Investors can obtain a NIL or lower withholding tax certificate under section 197 for such income.
  - The proposed amendment will be effective from 1 June 2016.

- ***Paperless scrutiny***

  - A legal framework for automation of various processes and paperless scrutiny will be introduced.
  - The proposed amendment will be effective from 1 June 2016.

- ***Capital gains***
  - The term ‘unlisted securities’ under section 112(1)(c) will also include shares of an unlisted company. Therefore, LTCG arising to a NR from the transfer such shares will be chargeable to tax at 10%.
  - Shares of an unlisted company would need to be held for 2 years to qualify as a long term capital asset, as per the FM’s speech.
- ***Filing of return of income***
  - Return of income is required to be filed even for exempt LTCG on sale of listed securities if the amount exceeds the basic exemption limit.
  - Time limit for filing of a belated return is reduced to one year from end of FY and the same can be revised if the taxpayer discovers any omission or any wrong statement therein.
  - A return of income will not be considered as a defective return, if the tax and interest payable, has not been paid on or before the date of filing the return.
- ***Time limits for scrutiny and appeals***
  - Several time lines pertaining to scrutiny and appeals have been amended.
  - The proposed amendments are effective from 1 June 2016.

- The Tax officer can also use information or documents received from the prescribed income-tax authority for the purpose of re-opening of scrutiny.
- Processing of return of income under section 143(1) will be mandatory prior to scrutiny under section 143(3).
- ***Advance tax instalments and dates modified***
  - All taxpayers are now required to pay advance tax in four instalments as applicable to corporates (15 June, 15 September, 15 December and 15 March).
- ***Interest on refund increased in certain cases***
  - Period for grant of interest on refund will begin from the date of filing of return of income or payment of tax, whichever is later. Additional 3% interest (i.e. total 9%p.a.) will be paid on delays beyond the prescribed period on refunds arising out of appeal orders.
  - The proposed amendment is effective from 1 June 2016.
- ***No appeal against Dispute Resolution Panel orders***
  - To reduce litigation, the Tax officer will not be allowed to appeal against the directions of the DRP.
- ***Provisions relating to Income Tax Appellate Tribunal ('ITAT')***
  - The ITAT will be required to rectify mistakes in its order apparent from the record within six months from the end of the month in which the order is passed, as against a time limit of four years earlier. Further, a single member bench may dispose of a case where the total income does not exceed INR 5 million.

- The proposed amendment is effective from 1 June 2016.

- ***Penal provisions***
  - Penalty provisions will be rationalised with penalties of 50% of the tax payable on under-reported income and 200% of the tax payable on misreported income.
  - Penalty on undisclosed income unearthed pursuant to a search will be levied at 60% of such income.

- The taxpayer will be able to seek immunity from penalty and prosecution by making an application to the Tax officer within one month from the end of the month in which the order is received, provided tax and interest are paid and no appeal is filed. The Tax officer on satisfying certain conditions can grant or reject immunity from penalty after giving an opportunity to be heard.

- Provision of bank guarantee to be allowed as an alternative to attachment of assets under section 281B. The proposed amendment will be effective from 1 June 2016.

Indirect taxes

In his Budget Speech, the FM made only a passing reference to the Goods and Service Tax ('GST') which was to be introduced this year. This was probably because of the opposition to GST and the onerous task of getting a constitutional amendment passed in Parliament. The FM has also introduced an Indirect Tax Resolution Scheme for Service tax, Excise duty and Customs duty for matters in appeal at the stage of Commissioner (Appeals). However, considering the terms of settlement calling for payment of taxes/duties with interest and 25% penalty, the scheme may not find many takers. The FM has also abolished 13 cesses and introduced 3 new cesses in the last six months (including the Swachh Bharat Cess).

Service tax

- The key amendments in Service tax provisions are as follows:
  - A Krishi Kalyan Cess of 0.5% has been introduced with effect from 1 June 2016 on all taxable services. Thus, the effective tax rate on services will be 15% considering the basic rate of Service tax as well as the Swachh Bharat Cess ('SBC') of 0.5% introduced from 15 November 2015.
  - Service tax exemptions in respect of the following services are withdrawn:

- Construction services in respect of monorail and metro projects which will be taxed at a basic rate of 5.6% after abatement.
- AC Stage carriage will be taxed at a basic rate of 5.6% (in line with Service tax on contract carriage).
- Transport by cable car, ropeway and tramway is proposed to be taxed at 14%. This will make tourists pay more and hence, may be a retrograde step in so far as promoting India as a tourism destination is concerned.

▪ Exemptions are given to the following services:

- Housing Projects under affordable Housing schemes (30 sq mts in four metro cities and 60 sq mts in other areas) from 1 March 2016.
- Services rendered by Pension Fund Regulatory and Development Authority/Employees Provident Fund Organisation/Insurance Regulatory and Development Authority of India and SEBI from 1 April 2016. Earlier, only services rendered by the RBI were exempt.
- Cold chain/biotechnology/vocational training and cultural projects of the Government from 1 April 2016.

▪ Single premium insurance policy will attract Service tax at 1.4% as against 3.5% earlier, from 1 April 2016.

- Service tax is levied on Indian shipping lines along with full input tax credit available so as to ensure their parity with foreign shipping lines.
- Service tax is levied on receipt basis and payment of Service tax is made on a quarterly basis for One Person Companies (‘OPC’) and HUF.
- The CENVAT credit rules have been amended to give an option to Banks and Financial Institutions to either reverse 50% of Input Tax Credit or reverse only part credit in proportion to their exempt service turnover vis-a-vis their total turnover.
- An important clarification is made that allocation of Radio Frequency Spectrum by the Government will be a taxable service and not a sale of intangible goods.
- Further clarifications include mutual exclusivity of application of Service tax and Excise duty on one taxable event.
- Interest rates and abatements have been rationalised in line with those applicable to Customs duty and Excise duty payments, except when the tax payer has collected and not paid the Service tax, in which case a higher rate of interest of 24% p.a. is prescribed.
- The limit for prosecution for wrongful withholding of Service tax has been enhanced to INR 20 million from INR 10 million earlier.
- The limitation period for short or under recovery of Service tax, when not attributable to fraud, collusion or misrepresentation, has been extended from 18 months to 30 months.

Excise duty

➢ The key amendments in Excise duty provisions are as follows:

- An infrastructure cess at the following rates is proposed on motor vehicles covered under heading 8703 of Central Excise Tariff:

Type of vehicle	Rate of cess applicable
Petrol/CNG/LPG Vehicles less than 4 m length and less than 1200 cc capacity	1%
Diesel Vehicles less than 1500 cc capacity	2.5 %
SUV/luxury sedans and others	4 %

- Excise duty has been imposed on jewellery (beyond prescribed threshold turnover) and on readymade garments.
- Interest rate of 15% on Excise duty delayed payments has been prescribed to harmonise it with interest payable under the Customs Duty legislation.

- Inverted duty structure is further proposed to be rationalise by encompassing more items within its ambit.
- Clean Environment Cess increased from INR 200 pt to INR 400 pt
- Significant changes in Excise duty rates are as follows:

Item	Existing rate	Proposed rate
Aviation Fuel	8	14
Fertiliser Mix/RMC	12.5	NIL
Jewellery	NIL without CENVAT 6 with CENVAT	1 without CENVAT 12.5 with CENVAT
Selected Electronic/Mobile components	12.5 %	NIL
Sterilized Dialysis	12.5%	NIL
Mineral Water/Flavoured Sweetened aerated waters	18%	21%
Refrigerated Containers	12.5%	6%

Branded Readymade Garments of INR 1000/0 or more	NIL without CENVAT 6% with CENVAT	2% without CENVAT 12.5% with CENVAT

Customs duty

- The key amendments in Customs duty provisions are as follows:
  - Sweeping changes are proposes in bonded warehousing provisions facilitating repacking, manufacture, processing of items intended for re-export without payment of Customs duties at intermediate stages.
  - Rules for maintain records for such warehouses have also been rationalised and simplified.
  - Free Baggage allowances and baggage rules have been amended and it is proposed that only a passenger carrying dutiable goods would be required to declare the same at the customs station.
  - The limitation period for recovery of short paid duty has been increased to 2 years from 1 year earlier.
  - Significant changes in Customs duty rates are as follows:

Items	Existing rate	Proposed rate
Natural latex balloons	10%	20%

Imitation Jewellery	10%	15%
Industrial Solar Water Heater	7.5%	10%
E – Readers	NIL	7.5%
Plans, drawings, designs	NIL	10%
Specified fibres/Yarns	5%	2.5%

Abbreviations

AIF	: Alternative Investment Fund	FPI	: Foreign Portfolio Investor
AMT	: Alternate Minimum Tax	FY	: Financial Year
AOP	: Association of Persons	GAAR	: General Anti-avoidance Rule
ATM	: Automatic Teller Machine	GDP	: Gross Domestic Product
BEPS	: Base Erosion and Profit Shifting	GST	: Goods and Services Tax
BOI	: Body of Individuals	HUF	: Hindu Undivided Family
B2B	: Business to Business	IFSC	: International Financial Services Centre
CbC	: Country by Country		
CNG	: Compressed Natural Gas	IMF	: International Monetary Fund
CPI	: Consumer Price Index	INR	: Indian Rupee
CSR	: Corporate Social Responsibility	InvIT	: Infrastructure Investment Fund
DDT	: Dividend Distribution Tax	I.T. Act	: The Income-tax Act, 1961
DRP	: Dispute Resolution Panel	LIC	: Life Insurance Corporation of India
DTAA	: Double Taxation Avoidance Agreement		
EPF	: Employees' Provident Fund	LLP	: Limited Liability Partnership
EET	: Exempt Exempt Taxable	LPG	: Liquefied Petroleum Gas
FDI	: Foreign Direct Investment	LTCG	: Long Term Capital Gain
FM	: Finance Minister	MAT	: Minimum Alternate Tax
FIPB	: Foreign Investment Promotion Board	MNE	: Multinational Enterprise

MGNREGS	: Mahatma Gandhi National Rural Employment Guarantee Scheme
NBFC	: Non-Banking Financial Company
NPS	: National Pension Scheme
NR	: Non-Resident
OPC	: One Person Company
PAN	: Permanent Account Number
PE	: Permanent Establishment
PF	: Provident Fund
POEM	: Place Of Effective Management
PPP	: Public Private Partnership
PSB	: Public Sector Bank
RBI	: Reserve Bank of India
REIT	: Real Estate Investment Trust
SAF	: Superannuation Fund
SARFAESI Act	: Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SBC	: Swachh Bharat Cess
SEBI	: Securities and Exchange Board of India
SEZ	: Special Economic Zone
SGB	: Sovereign Gold Bond
SPV	: Special Purpose Vehicle
STT	: Securities Transaction Tax
SUV	: Sports Utility Vehicle
TCS	: Tax Collection at Source
TDS	: Tax Deducted at Source
WPI	: Wholesale Price Index

About JMP Advisors

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Jairaj (*Jai*) Purandare, the Founder Chairman has over three decades of experience in tax and business advisory matters and is an authority on tax and regulation in India. *Jai* was Regional Managing Partner and Country Leader-Markets & Industries of *PricewaterhouseCoopers* India. Earlier, *Jai* was Chairman of *Ernst & Young* India and Country Head of the Tax & Business Advisory practice of *Andersen* India.

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