UNION BUDGET 2016-17

An SKP Presentation

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SWEDISH CHAMBER OF COMMERCE INDIA

ECONOMIC OVERVIEW

- GDP Growth Rate of 7.6% in 2015-16
  - Expected 7.75% in 2016-17
- Fiscal Deficit 2015-16 achieved 3.9%
  - Expected 3.5% in 2016-17
- FDI Inflows USD 30.2 billion between April 2015-December 2015; increase of 38.6%
- Foreign Exchange Reserves at all time high of USD 350 billion

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POLICY ANNOUNCEMENTS

- Nine distinct pillars identified to transform India:
  - Agriculture and Farmer’s welfare
  - Rural Sector Growth with focus on employment and infrastructure
  - Social sector including Healthcare
  - Education, Skills and Job Creation
  - Infrastructure and Investments
  - Financial Sector reforms
  - Governance and Ease of Doing Business
  - Fiscal Discipline
  - Tax Reforms

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DIRECT TAX PROPOSALS

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RATES OF TAX

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RATES OF TAX

- No change in personal tax rates or basic exemption limits
- Rate of surcharge for individual taxpayers with taxable income > INR 10 million increased from 12% to 15% [maximum tax rate = 35.54%]
- Rebate for taxpayers with income < INR 0.5 million increased from INR 2,000 to INR 5,000
- Resident individuals liable to pay tax at 10% (plus SC and Cess) on gross annual dividend > INR 1 million even after DDT is paid by the Indian company
- Corporate tax rate of 29% for an Indian company having a turnover/gross receipts < INR 50 million in FY 2014-15
- Corporate tax rate of 25% for new domestic manufacturing companies set-up after 1 March 2016 not claiming any tax incentives, subject to certain conditions

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PHASING OUT OF MAJOR DEDUCTIONS/EXEMPTIONS

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PHASING OUT OF MAJOR DEDUCTIONS/EXEMPTIONS

Benefit	Provisions
Profit–linked deductions for units in SEZs exporting articles/things/services	Deduction to be available only for units commencing operations by 31 March 2020
100% profit–linked deductions for infrastructure facilities, development of SEZs, production of Natural Gas	No deduction if activity commences on or after 1 April 2017
Weighted deduction of 200% for expenditure on in-house scientific research	▪ Weighted deduction restricted to 150% from 1 April 2017 to 31 March 2020 ▪ Thereafter, restricted to 100%
Accelerated depreciation	▪ Highest rate to be 40% from 1 April 2017 ▪ This is applicable for all assets in block (whether new or old)

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EQUALISATION LEVY

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EQUALISATION LEVY – ‘GOOGLE TAX’

- New chapter [Chapter VIII] inserted for taxation of non-resident taxpayers in the online advertisement business
- ‘Equalisation Levy’ of 6% to be deducted by payer on consideration for online advertisement and specified services
- Covers business-to-business transactions only and transactions > INR 0.1 million
- Non-deduction of ‘Equalisation Levy’ to result in disallowance of expense
- Effective once notified by the government
- Action as per BEPS Action Plan 1

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PATENT BOX REGIME

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PATENT BOX REGIME

- Concessional tax rate of 10% (plus SC and Cess) on royalty for patent developed and registered in India
- Available only to resident patentee taxpayer
- Step taken to boost indigenous R&D and make India a global R&D and IP hub
- Action in line with BEPS Action Plan 5
- Exemption even from levy of MAT

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START-UP INDIA

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START-UP INDIA

- 100% deduction of profits for 3 out of 5 years for start-ups set up between 1 April 2016 and 1 April 2019
  - However, MAT would apply
- Exemption provided for long-term capital gains invested in fund established by CG for start-ups
  - Investment for 3 years
  - Maximum amount – INR 5 million
- Exemption for individuals/HUF on long-term capital gains from residential property invested in shares of a start-up company
  - To hold at 50% shares of start-up company
  - Start-ups to use funds for purchase of new assets before filing of tax return by investor
- 'New asset' definition amended to include computers and computer software for approved technology–driven start-ups

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EASE OF DOING BUSINESS

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EASE OF DOING BUSINESS

- Exemption from DDT on distribution made by an SPV to a Business Trust
  - Dividend exempt in hands of a business trust and investor
  - Business trust to hold 100% share capital of SPV (or as per the government's requirement)
  - Exemption available only for distribution from profits after the business trust acquires shareholding in the SPV - distribution from earlier profits to be taxable
  - Effective from 1 June 2016
- Threshold limit for the option of a presumptive taxation scheme for small businessmen increased from INR 10 million to INR 20 million
- Presumptive taxation scheme introduced for professionals (other than Company/LLP) if turnover <= INR 5 million and a presumed profit of 50%
- Tax audit limit for professionals increased from INR 2.5 million to INR 5 million

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EASE OF DOING BUSINESS

- Condition of installing new assets for investment allowance relaxed
  - Available if the new asset is installed by 31 March 2017
  - Allowance available in the year of installation and applicable from 1 April 2015
- New provisions introduced for tax treatment on spectrum fee paid for the purchase of spectrum
  - To be amortised over a period of the right to use spectrum
  - Loss on transfer to be allowed as expense
  - Gain on transfer to be chargeable to tax
  - Amortisation benefits to continue even in case of amalgamation
- POEM provisions deferred by 1 year – effective from 1 April 2016
  - Transition mechanism to be provided for foreign company not assessed to tax earlier
  - Would cover issues such as computation of income, set-off of losses, depreciation, etc.

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EMPLOYEE RELATED AMENDMENTS

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EMPLOYEE RELATED AMENDMENTS

- Deduction of 30% of additional wages paid to new regular workmen for 3 years extended to taxpayers from all sectors
  - Deduction available where cost incurred on employees with emoluments < INR 25,000 p.m.
  - Number of days of employment reduced from 300 to 240
  - Requirement of 10% increase every year in workforce removed
- Withdrawals of employees' contribution to EPF made on or after 1 April 2016 – 40% exempt, balance taxable
- Withdrawals from superannuation fund of contributions made on or after 1 April 2016 – 40% exempt, balance taxable
- Withdrawals from NPS – 40% exempt, balance taxable

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FINANCIAL SECTOR

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FINANCIAL SECTOR

- Deduction of 5% of total income for provision for bad and doubtful debts by NBFCs
- Various exemptions provided in relation to IFSC
  - Capital gains in foreign currency from transactions on a recognised stock exchange in IFSC
  - MAT to be charged at only 9% of book profits
  - No DDT on distribution of dividends by a company in IFSC
  - No STT/CTT on transactions in foreign currency on a recognised stock exchange in IFSC
- Securitisation trusts to not pay distribution tax from 1 June 2016. Subsequently, to deduct tax from payments to investors
  - Residents – Individuals/HUF – 25%, Others – 30%
  - Non-residents – at rates in force

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WITHHOLDING TAX

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WITHHOLDING TAX

- Penal withholding tax rate of 20% for non-resident taxpayers without PAN not to apply on submission of alternate documents
- Tax to be collected @1% on sale of motor cars for value > INR 1 million
- Tax to be collected @1% on sale in cash of goods (other than bullion and jewellery) or provision of services > INR 0.2 million
- Withholding tax reduced from 10% to 5% on payment of commission or brokerage
- Increase in threshold limits for certain payments
- All the above provisions are applicable from 1 June 2016

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INCOME DECLARATION SCHEME

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INCOME DECLARATION SCHEME

- Continued focus on domestic black money
- Total tax of 45% (30% tax + 7.5% Krishi Kalyan Cess + 7.5% penalty)
- If income disclosed in the form of assets, FMV as on 1 June 2016 to be considered
- All open proceedings including notices issued and certain other cases not covered
- No scrutiny/prosecution under the Income-tax Act, Wealth-tax Act
- Declarations made cannot be used as evidence under any other law
- Immunity from the Benami Transactions (Prohibition) Act, 1988
- Effective from 1 June 2016, compliance window to be notified

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NEW DISPUTE RESOLUTION SCHEME

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NEW DISPUTE RESOLUTION SCHEME

- Amnesty scheme – for appeals pending at CIT(A) and dispute due to retrospective amendments disputes

Disputed tax arising out of	Tax payable
Pending appeals	
Tax dispute up to INR 1 million	Tax and interest up to assessment
Tax dispute > INR 1 million	Tax, interest up to assessment and 25% of penalty
Penalty appeals	25% of penalty leviable
Retrospective amendments	Tax amount (no interest/penalty)

- Post declaration, all pending appeals shall be withdrawn and immunity granted from proceedings under the Income-tax Act
- Not applicable to search cases, foreign undisclosed income, etc.
- Effective once notified by the government

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EXTENSIVE LEVEL OF TRANSFER PRICING DOCUMENTATION

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EXTENSIVE LEVEL OF TRANSFER PRICING DOCUMENTATION

- India's transfer pricing documentation requirements are getting aligned with the OECD's recommendations under the BEPS project
- Companies need to furnish group level extensive details by way of a country-by-country (CbC) report and master file, in addition to the current requirements in India
- Stringent graded penalty structure would apply in case of non-compliance, as high as INR 5,000 per day to INR 50,000 per day of default
- CbC for Indian MNCs applicable only if group consolidated revenues more than Euro 750 million (~INR 54 billion) for March 2016
- Amendments will be effective from 1 April 2017 and shall apply for the AY 2017-18 and subsequent assessment years

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CHANGES IN TAX ADMINISTRATION

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CHANGES IN TAX ADMINISTRATION

- Uniform advance tax due dates for all taxpayers except the taxpayers opting for presumptive taxation at 8% of gross receipts effective FY 2016-17
- Government to pay interest at 9% p.a. instead of 6% p.a. for delay beyond prescribed time by the tax department in giving effect to an appellate order
- Scrutiny assessment through electronic mode at the option of the taxpayer
- Time limit for completion of assessment reduced by 3 months
- Time limit for reassessment/search proceedings revised
- Tax officer not to appeal to ITAT against DRP order
- Provision inserted for the Tax Officer to obtain bank guarantee for recovering tax dues instead of actual attachment of property
- All the above provisions are applicable from 1 June 2016

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CHANGES IN TAX ADMINISTRATION

- Rationalisation of penalty provisions
  - Effective from FY 2016-17
  - Concept of ‘under-reporting’ and ‘misreporting’ introduced
  - Rate of penalty for ‘under-reporting’ is 50% and for ‘misreporting’ is 200% of tax payable
- Tax return not defective even if filed without payment of self-assessment tax
- Stay of demand – not in the Income-tax Act but revised instructions issued
  - Where the appeal is pending before CIT(A), tax officer to grant stay of demand if 15% of tax demand paid, unless the tax officer is of the view that a higher or lower amount is warranted
  - Tax officer may impose conditions as deemed fit in lieu of staying of demand as mentioned above

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OTHERS

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OTHERS

- Additional depreciation of 20% on new plant and machinery extended to taxpayers in power transmission
- 100% deduction of profits from developing and building affordable housing projects, subject to conditions
- Clarification that long-term capital gains to non-resident taxpayers on the sale shares of a private Indian company is eligible for a concessional tax rate of 10%
- Clarification that foreign companies not having PE/place of business in India are not liable to MAT with effect from FY 2000-01
- Provisions relating tax on buyback of unlisted shares clarified
  - Mechanism to be prescribed to compute amount under various scenarios
- From 1 June 2016, rate of STT on options increased from 0.017% to 0.05%

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INDIRECT TAX PROPOSALS

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SERVICE TAX

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Key Changes

- Effective rate of service tax to be increased from 14.5% to 15%
  - Krishi Kalyan Cess introduced at 0.5% (which will be creditable)

  (Effective from 1 June 2016)
  - SBC at 0.5% to be continued
- Contradiction/ambiguity related to Section 67A and Rule 5 of the Point of Taxation Rules with regard to point of taxation in case of new levy, now resolved
- Limitation period for recovery of tax enhanced from 18 months to 30 months, in cases not involving fraud, collusion and supersession
- Uniform interest rate of 15% proposed, except in cases of service tax collected and not deposited where the interest rate proposed is 24%
  - Concessional interest rate proposed at 12% where value of taxable services is less than INR 6 million in the preceding financial year/s

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Exemptions Restored

- Construction, erection services, etc. provided (subject to conditions):
  - Government or local authority or governmental authority
  - Airport or port (for original works)

(Effective from the enactment of the Finance Bill 2016)

Exemptions Widened

- Service by way of construction, erection, etc. of original works pertaining to low cost houses with a carpet area up to 60 square metres per house in a housing project (under Affordable Housing in Partnership)

(Effective from 1 March 2016)

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Exemptions Withdrawn

- Legal services provided by senior advocates and persons represented on an arbitral tribunal (now senior advocate to charge service tax)

(Effective from 1 April 2016)

- Services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro

(Effective from 1 March 2016)

- Services of transportation of goods by vessel, from a place outside India up to the customs station of clearance (negative list service)
  - If the service provider is a domestic shipping line – Forward charge
  - If the service provider is a foreign shipping line – Reverse charge (business entity to pay service tax)

(Effective from 1 June 2016)

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Services under Reverse Charge

- Services provided by mutual fund agents/distributors to AMCs now brought under forward charge
- Service tax on services provided by the government or local authority to business entities, now payable by business entities

(Effective from 1 April 2016)

Other Changes

- The limitation period for a filing refund claim would be one year from:
  - Receipt of foreign exchange, after an issue of invoice or
  - The date of issue of an invoice, if payment is received in advance

(Effective from 1 March 2016)

- Annual service tax return proposed

(Effective from 1 April 2016)

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Changes in Abatement Rates

Services	Existing	Proposed
Transport of goods by rail other than Indian railways	70%	60%
Services of GTA in relation to transportation of used household goods	70%	60%
Service provided by tour operator:		
▪ A tour only for the purpose of arranging or booking accommodation for any person	90%	90%
▪ Tours other than above	75% / 60%	70%
Service provided for the construction of complex, building, civil structure, or any other part:		
▪ Residential unit with a carpet area less than 2000 square feet and costing less than one crore	75%	70%
▪ Any other case	70%	

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CENTRAL EXCISE

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CENTRAL EXCISE

Introduction of New Cess/Levy

- Infrastructure Cess on specified motor vehicles up to 4% proposed (which would be non-creditable)
- Articles of jewellery would attract an excise duty @ 1% (without CENVAT Credit) or 12.5% (with CENVAT Credit)
- Readymade garments of retail sale price of INR 1,000 would attract excise duty @ 2% (without CENVAT Credit) or 12.5% (with CENVAT Credit)
    - Increase in tariff value from 30% to 60% on readymade garments

(Effective 1 March 2016)

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CENTRAL EXCISE

Exemptions Widened

- IT software not required to declare retail sale price, exempted from excise duty subject to a declaration stating that the service tax shall be paid on it

Type of Sale	Tax Applicable
RSP Applicable	Excise Duty
RSP Not Applicable	Service Tax

Measures to Promote the Ease of Doing Business

- Reduction of statutory returns from 27 to 13 viz. 12 monthly and one annual return
- Revision of returns under central excise to be permissible
- Rationalisation of CENVAT credit distribution by ISD to include outsourced manufacturing units and a realignment of apportionment conditions

(Effective 1 April 2016)

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CENVAT Credit

- Revamped provisions for the reversal of CENVAT credit to increase eligible credit and reduce the cascading effect
- Full CENVAT credit on capital goods with value up to INR 10,000 in the year of receipt
- CENVAT credit on capital goods used in office, in a factory would be eligible
- Banks and financial institutions (including NBFCs) now allowed to reverse credit by apportion or existing option of 50% reversal
- The concept of a ‘common warehouse’ introduced to benefit a manufacturer with multiple factories, as centralised sourcing of inputs could decrease the overall cost of procurement

(Effective 1 April 2016)

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CUSTOMS

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CUSTOMS

Key Changes

- Rationalisation of customs duty keeping in view the government's Make in India initiative

(Effective from 1 March 2016)

- Limitation period in cases not involving fraud, suppression of facts, wilful misstatement, etc. is increased from one year to two years
- For the purpose of warehousing specified imported goods, the bond to be executed is now thrice the duty payment as against the current twice duty payment

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FOREIGN TRADE POLICY

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FOREIGN TRADE POLICY (FTP)

- The new FTP schemes announced through FTP 2015-20 would be effective from 1 April 2016
- The key schemes available to exporters under FTP 2015-20 are:
  - Merchandise Export from India Scheme (MEIS)
  - Service Export from India Scheme (SEIS)
  - Duty Exemption/Remission Scheme
  - Duty Free Import Authorisation Scheme (DFIA)
  - Schemes for Exporters of Gems and Jewellery
  - Export Promotion Capital Goods Scheme (EPCG)

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GOODS AND SERVICES TAX

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GOODS AND SERVICES TAX (GST)

- Roadmap/fixed timeline for GST implementation was not announced in Budget 2016
- Finance minister only assured that the government shall endeavour to pursue constitutional amendments (due to be discussed in the second half of Budget Session 2016) to enable the implementation of the GST Law
- Economic Survey 2015-16 strongly recommends the implementation of GST in India
- Economic Survey 2015-16 enumerates the following:
  - A move to GST would eliminate tax leakages due to the rationalisation of indirect tax exemptions which account to an estimated cost of INR 3.3 trillion;
  - GST would affect potentially 2 to 2.5 million excise and service taxpayers; and
  - GST is an unprecedented reform in the modern global tax history

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