



# NEWSLETTER

# Noida Branch of CIRC

## THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

For in house Circulation Only

No. – 03 (2016-2017)

May -2016

## Respected Members,

### Greetings of the day.....



Friends, at the epistle of this address, I convey my thanks to all the members for successful accomplishment of the April months bank audit assignment and other professional works. We the managing committee of Noida Branch is striving to provide the qualitative and subjective seminars on the subjects which is need of the hour. In the Endeavour we have organized seminar of “excise duty on manufacturing of Jewellery” and taken by the members hand in hand.

Friends much awaited Goods & Service Tax Act is around the corner of its applicability and in the process we are organizing the seminar on 7<sup>th</sup> May with the eminent speaker, who has already aired two books on the subject and a commendable knowledge.

As our economy is growing leaps and bound and there is much requirement to groom, develop, knowledgeable aptitude in our professional bank to make the best through globally professionals. **IFRS converged Ind As** is merely applicable and for some units theses are optional for this year but from next year it is mandatory for some sort of companies based on criteria of turnover, net worth and other areas. Likewise, **CARO 2016** is applicable and needs our more focus on the subject. We will arrange a full day seminar to make acquaintance on the subjects.

It is my Ernest believes that we should gear ourselves towards the upcoming challenges right now, rather than to wait till they became mandatory. A popular saying that “**A better start is half work done**”.

I pledge my gratitude to all the subject writers, managing committee members, staff, and all members of Noida branch to guide us, and stimulate us to serve the profession.

**Thanking You**

**Sincere Regards**

**CA SANJAY SHARMA**

**CHAIRMAN, NOIDA BRANCH CIRC**





## **Secretary writes.....**

### **Respected Professional colleagues,**

Again I am getting opportunity to speak all of you through this e-newsletter.

Friends, the month of April had kept all of us busy in different types of audits, your this Noida branch had also undergone the process of statutory audit, audit was completed and relevant documents were signed by appropriate people. Now the branch is in process to convene an Annual General Meeting.

Friends, you must be aware of the risks of material misstatements in the financial statements, we all audit in today's volatile economic environment with the responsibility of navigating more complex reporting standards and new technologies, we should modify the overall audit strategy and the audit plan as per the changing economic conditions and amendments in relevant laws.

Central India Regional India (CIRC) had organised an orientation program for members of Management Committee of all branches falling under the jurisdiction of CIRC at Bhopal on 13<sup>th</sup> and 14<sup>th</sup> April, where ICAI Hon'ble President, Vice President, Central Council Members from CIRC and all Regional Council members from CIRC had graced the orientation program and become the guiding force for all participating branches. Your Noida branch's committee members also participated in orientation and learned lots.

Friends, we have started in your branch a program called "Speaker Development" to those Chartered Accountants who wants to speak but could not get an opportunity to deliver deliberation before gathering. In this series, we had organised a seminar on Indirect Taxes on 23<sup>rd</sup> April 2016, and the speaker was CA Ashish Vaish. Your branch gets an over whelming response. Now our next program in this series shall be in the month of May 2016.

Your suggestions shall always be a source of inspiration for me and my other committee's colleagues.

With best regards,  
**CA SUDHIR KUMAR**  
**SECRETARY, NOIDA Branch CIRC**



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## FORTHCOMING PROGRAMMES

### PROGRAMME DETAILS

SEMINAR ON “GST-WAY FORWARD AND PROFESSIONAL OPPORTUNITIES”

### DATE

07<sup>th</sup>, May, 2016

SEMINAR ON INDIAN ACCOUNTING STANDARD (IND AS ) AND CARO 2016

21<sup>st</sup>, May, 2016

## ADVISORY COMMITTEE

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CA S.C. GOYAL	9811070874	CA ATUL AGRAWAL	9990057390
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## **CONVERSION OF UNIT IN DTA TO EOU UNIT**



At the outset of my penning down the procedure for conversion of unit operating in DTA ( Domestic Tariff Area) to EOU(Export Oriented Unit), EHTP ( Electronic hardware technology Park), STP ( software technology Park), BTP ( Bio-technology Park) , I want to mention that there is way to improve the profitability of the company . There are some key points which should be adhered with so that conversion will be more result oriented, the key notes as follows:-

The turnover of the company should be more than 10 Crores per annum( this limit is not a mandatory as per act , taken for the sake more beneficial if turnover exceeds from 10 Crores)

The composition of the turnover should be more to the export obligation.

The production cost consists of imported material more than 60%.

The company is looking forward for procurement of Capital goods for production for business expansion.

Presently companies use the format of Advance licenses for raw Material procurement and EPCG for Capex (Capital Goods procurement) for availing the duty benefits, under EOU scheme the company can avail the facility under one status EOU/STP/BTP/EHTP and save operational cost.

Before opting for the conversion it is advised to have the Due Diligence report from some professional for the viability of conversion.

A brief procedure for such conversion is provided as below :-

### **APPENDIX 14 I-O**

#### **GUIDELINES FOR CONVERSION OF DOMESTIC TARIFF AREA (DTA) UNIT INTO EXPORT ORIENTED UNIT (EOU)/ ELECTRONIC HARDWARE TECHNOLOGY PARK (EHTP)/ SOFTWARE TECHNOLOGY PARK (STP)/ BIO-TECHNOLOGY PARK (BTP) UNIT**

Note: Please see paragraph 6.37.1 of the Handbook of Procedures

DTA units intending to get converted into EOU/EHTP/STP/BTP unit will follow the procedure as below for such conversion:

(1) Apply to concerned Development Commissioner (DC) in a manner as applicable to new units.

(2) After getting approval of the project and obtaining Letter of Permission (LOP) from DC, execute Legal

Undertaking (LUT) in prescribed format with DC.

(3) Thereafter, apply for private bonded licence to concerned Customs/ Central Excise authority with execution of B-17 Bond.

**WHERE ADVANCE AUTHORISATION IS PENDING REDEMPTION**

(3.1) If the unit is having outstanding export commitment under advance authorization scheme, following procedure before execution of Bond with customs and Central Excise Authority need to be adopted :

(i) Approach concerned Customs & Central Excise Authority and obtain certificate showing physical verification of unutilized material held in stock against all advance authorizations (not yet redeemed) and such raw material as intended to be carried forward to EOU;

(ii) Approach Regional Authority along with a copy of the following

documents: (a) LOP/LUT executed with DC,

(b) Certificate of stock verification obtained from Customs/Central Excise

(c) LUT with RA as annexed.

(d) Details of imports/exports against all advance authorizations and utilized/ balance materials as per prescribed consumption register.

The firm must submit original authorizations and connected documents of exports to concerned R.A.

(iii) RA, will calculate unfulfilled export obligation, as per prevailing norms. In case norms are not fixed, R.A. will take up with Norms Committee for its fixation. Such export performance would only be taken into account, as within valid export obligation period of Advance Authorization ;

(iv) R.A. will thereafter communicate “No objection” to DC and Central Excise Authority with endorsement to applicant unit.

(v) The unit will approach the Customs/Central Excise Authority for execution of B-17 bond ;

(vi) Raw material obtained under Advance Authorization, which is having valid export obligation period can only be carried over;

(vii) Where export obligation period has expired, only course available is payment of duties, interest and penalty as applicable, proportionate to unfulfilled export obligation ;

(viii) RA would accordingly process case for discharge of obligation and redemption of bond LUT

executed against all the advance authorizations issued already.

**EPCG Authorization:**

(4) In case there is an outstanding export commitment under EPCG Scheme, it will be added to future

export obligation by adding value of capital goods to the imported capital goods value of the EOU and all previous obligations under EPCG would cease to exist on such inclusion.

Hope the subject will enlighten the era of new approach for the better serving to the profession and business entity.

**Thanking You,**  
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## Why One Should Switch Over To Solar Energy?



Did you know that the majority of electricity produced in India is derived from burning of coal, oil, natural gas, etc., which along with the smoke emitted by our vehicles and the industry is polluting the environment severely? The Delhi –NCR is rated as the third most polluted region in the world. A recent study has shown that every person residing in Delhi, who is above the age of 35, has developed the lungs of a smoker, even if the person doesn't smoke at all. The pollution levels of Delhi-NCR along with other Indian cities are staggering and many times higher than the prescribed WHO and CPCB limits. If you are born and brought up in Delhi, then you are bound to experience breathing troubles, asthma, etc. Continuing at the current pace, the environment would have been polluted so much that the next generation might not be able to even breathe properly in open air without the aid of oxygen masks.

For whom you are earning all the money for? Hopefully for your children and future generations, but have you ever thought of the environment you're passing on to them? Is it Clean or Polluted?

We need to find a solution to this problem collectively. Your small support and prudence can go a long way and help change the present scenario. The below mentioned points are crucial steps towards attaining our goal before it gets too late. If you have compassion to save Mother Earth and love your family, you won't waste time and start adhering to the following:

1. Adopt Solar Energy: Solar Energy is available in abundance in India. If you have an open rooftop, then you can supplement your "conventional energy" needs with "Solar Energy", which is harnessed by modern technology and is able to provide electricity for running even large loads like air conditioners and factory machinery. You can transform your home and office/factory



Into a Green Building. A case study is given below as Annexure-1 to explain in detail the total financial benefit to an entrepreneur after shifting to Solar Energy.

2. Move towards L.E.D. Lights: Replace your home and office/factory's conventional bulbs/ CFLs with LED lights. LED lights have a brighter light output and also consume less energy while providing a longer operating life. It saves around 70% of energy as compare to conventional lighting.
3. Start using 5 Star B.E.E. rated appliances.
4. Prefer public transportation (like Metro) to your own vehicle.
5. Use bicycle for commuting in your neighbourhood and in the local limits.

These remedies can be implemented from this moment itself. These might seem expensive to you, but turning a blind eye towards these might prove even costlier. The decision is yours!

Do you want to sacrifice your future generations' tomorrow for your petty benefits

Today?

Annexure-1: A Case Study for 100 KW Roof Top Solar Panel Project, illustrating the benefits of financial incentives as offered by Govt. of India and impact of the same on the Investment, earnings and Cash Flow of an entrepreneur:

Table -1: Investment Scenario	
Project Size	100 KW
Project Life	25 Years
Use	Captive
No. of units generated per year	1.37 Lakh
Amount (Rs. in Lakhs)	
Total Project Cost (TPC)	65.00
Source of Fund:	
Bank Finance @ 11.50% p.a. repayable in 7 years	48.75
Own Fund	16.25
Total	65.00

Table2: Tax Benefits & Cash Flow						Rs. In Lakhs				
Cash Inflow due to Tax Benefit @ 30% + Surcharge on a/c of:	Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10
Accelerated Depreciation @ 40% of W.D.V.	8.03	4.82	2.89	1.74	1.04	0.62	0.37	0.22	0.13	0.08
Additional Expenses on A/c of Interest on bank loan	1.70	1.44	1.18	0.92	0.66	0.40	0.14	-	-	-
Energy Saving per year @ Rs.8.50/unit	11.64	11.58	11.52	11.47	11.41	11.35	11.30	11.24	11.18	11.13
<b>(A) Total Saving</b>	<b>21.37</b>	<b>17.84</b>	<b>15.60</b>	<b>14.12</b>	<b>13.11</b>	<b>12.38</b>	<b>11.81</b>	<b>11.46</b>	<b>11.32</b>	<b>11.21</b>
<b>Cash Outflow</b>										
Own Investment	(16.25)	-	-	-	-	-	-	-	-	-
Loan Repayment	(12.20)	(11.40)	(10.60)	(9.80)	(9.00)	(8.20)	(7.40)	(0.00)	(0.00)	(0.00)
O&M Expenses	(0.65)	(0.68)	(0.72)	(0.75)	(0.79)	(0.83)	(0.87)	(0.91)	(0.96)	(1.01)
<b>(B) Total Net Cash Out Flow</b>	<b>(29.10)</b>	<b>(12.09)</b>	<b>(11.32)</b>	<b>(10.55)</b>	<b>(9.79)</b>	<b>(9.03)</b>	<b>(8.27)</b>	<b>(0.91)</b>	<b>(0.96)</b>	<b>(1.01)</b>
<b>(C) Net Cash flow (A- B)</b>	<b>(7.73)</b>	<b>5.76</b>	<b>4.28</b>	<b>3.57</b>	<b>3.32</b>	<b>3.35</b>	<b>3.54</b>	<b>10.55</b>	<b>10.36</b>	<b>10.20</b>
<b>Aggregate Net Cash Flow (Aggregate of C above)</b>	<b>(7.73)</b>	<b>(1.97)</b>	<b>2.31</b>	<b>5.88</b>	<b>9.20</b>	<b>12.55</b>	<b>16.09</b>	<b>26.64</b>	<b>36.99</b>	<b>47.19</b>



Note:

1. Effects of Inflation, Net metering & increased Power Tariff over the years have not been considered, which would increase the above-mentioned benefits.
2. Figures in brackets reflects cash outflow and other than that it is cash inflow.

Now, after analysing the facts & figures as given in Table-1 & 2, it is very much apparent that a businessman has to pay not more than Rs. 8.22 Lakhs (i.e. Rs. 16.25 Lakhs minus Depreciation of Rs. 8.03

Lakhs) from his pocket in the first year for setting up of solar plant of 100 KW and he will be getting benefits from the very first year of installing his own solar power generating plant at roof top of his establishment. Moreover, the pay-back period is 9-10 years and after that the entity would get the power virtually free of cost. This will be a great saving in operating cost which will give an edge to the products of the entity, as the cost of production will be less than its competitors, who are not using solar power to produce their goods.

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**An Entity has to invest only Rs. 8.22 Lakh for setting up of 100 KW Roof Top Solar Project**

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Further, if you compare the loan repayment with the saving in electricity, it is very much apparent that the saving in electricity is sufficient enough to cover the EMI towards loan repayment, meaning thereby an entity need not to pay anything extra on account of loan repayment, which has been taken for setting up of roof top solar plant. Instead you are just replacing the payee from Discoms (Power Distribution Companies) to Banks/FIs. So the cash flow on account of working capital is not going to be affected adversely for the businessman in a long run. This is a win-win situation for any entity and they should consider this decision by analysing the following facts:

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**No additional financial burden as you are replacing payment to the Discoms with EMI to Banks**

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Who must urgently install Roof Top Solar Power? An entity which has:

- 1) Abundant and unutilized roof –top
- 2) Paying heavy Power Bills with high Tariff rates (say more than Rs. 1 Lakh per month and having an effective power rate of more than Rs.6/Unit)
- 3) Not getting sufficient and uninterrupted power (say not more than 46 hours per day during day time)
- 4) Using Diesel Gen-Set, which on an average cost around Rs.16/unit and going to increase in the coming days due to change in Government policy.
- 5) Paying heavy Income Tax

Solution is setting up of Roof Top Solar Power, because of following reasons:

- It protects your business from the escalating energy bills and costly peak demand rates because in the last 2 years there has been 20% to 37% increase in tariff by State Electricity Regulatory Commission (SERCs) across India and this trend will surely continue unless we harness other alternatives. This increase in tariff is because of the fact that the price of coal is bound to increase.



- It reduces your dependence on Diesel Gen-set and results into dramatic reduction in operational cost, as gen-set running cost is around Rs. 16 per unit as compared to that of solar power.
- It is easy to install with well proven technology, affordable and has huge long term benefits.
- Solar plant on your industrial unit's roof top is a profitable investment with a payback period of 9-10 years with a return on investment of over 15% and assured returns for more than 15-16 years.
- Life of Solar Panel is confirmed for 25 years (with Warranty) which ensures virtually free power after payback period of 9-10 years.
- Your entity would be eligible to claim benefit of Accelerated Depreciation @ 40% under Income Tax Act, during the very first year of installation of solar power or else it can be carried forward, which also results into minimization of Tax Liability.
- Since the Roof Top Solar Power Plant is Grid Connected, it acts as a back-up in case solar rays are depleted due to cloud cover, haze, fog, rains, etc. On the other hand, if the solar power generated is not utilized then it will feed back to grid and will result into reduced conventional power bills due to the concept of "Net Metering".
- Unlimited free supply of the key ingredient, i.e. Sunlight.
- Reduced dependency on the Grid as you have your own power house on your industrial/residential roof top.
- Solar System has no moving parts, therefore require minimal operation and maintenance (O&M)
- Solar Power projects fall under the defined activities of CSR, which are compulsorily required to be incurred by certain entities as per the new Companies Act, 2013.
- The eco-friendly stamp for your Business/Profession
- As compared to conventional power projects, Roof Top solar power projects don't require huge funds since their size is usually small at between 1 KW to 500 KW.
- Limited risk and assured returns over a long period make solar power projects attractive
- Solar Power has a very little downside due to shorter execution period.
- India's national coal reserve is depleting and 80% of the total requirement is being imported.
- The technology has increased the Project Sustainability & Viability and now cost is at grid parity due to scalability.

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## KEY HIGHLIGHTS OF COMPANIES AMENDMENT BILL 2016



Hon'ble minister of corporate affairs introduces companies amendment bill 2016 in the Lok Sabha to further amend the companies Act, 2013 on dt17/03/2016

A brief summary of key amendments proposed in the Bill are outlined below

S.No.	Section	Proposed Amendment
1.	<b>Section 2(6)- Definition of 'associate company'</b>	Change in explanation of the term 'significant influence' under the definition of Associate Company has been proposed. Significant influence is proposed to mean control of atleast 20% of the voting power or control or participation in business decision under an agreement. Further the term 'Joint Venture' has also been defined.
2.	<b>Section 2(30)- Definition of 'Debenture'</b>	Under the definition of the terms "Debentures", it is proposed to exclude instruments referred to in Chapter III-D of the Reserve Bank of India Act 1943 and such other instrument prescribed by the Central Government in consultation with RBI.
3.	<b>Section 2(51)- Definition of 'Key Managerial Personnel'</b>	Under the definition of the term "Key Managerial Personnel", Officers not more than one level below the directors who is in whole time employment, designated as KMP by the Board, are proposed to be included.
4.	<b>Section 2(76)- Definition of 'Related Party'</b>	Foreign subsidiaries are proposed to be treated as the related party. Further an investing company or the venture of a company are also proposed to be considered as related party.
5.	<b>Section 2(87)- Definition of 'subsidiary company'</b>	It is proposed that a company will be treated as subsidiary in case the holding company exercises or controls more than one-half to the total voting power either at its own or together with one or more of its subsidiary companies. Currently instead of 'total voting power', 'total share capital' is used.
6.	<b>Section 4- Memorandum</b>	It is proposed that instead of specific objects in the Memorandum



			of Association of the Company, the Memorandum may state that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force. Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum.
7.			It is proposed that name reserved by the RoC shall be valid for 20 days from date of the approval instead of 60 days from the date of application, as currently provided.
8.	<b>Section 12- Registered office of company</b>		It is proposed that the company shall within 30 of its incorporation having a registered office instead of current requirement of 15 days.
9.	<b>Section 21- Authentication of documents, proceedings and contracts</b>		Apart from KMP and any Officer of the Company, it is proposed that an employee can also be authorized to authenticate documents on behalf of the Company.
10.	<b>Section 26- Matters to be stated in Prospectus</b>		Instead of detailed disclosure in the Prospectus, it is proposed that information and reports in financial statement as specified by SEBI in consultation with the Central Government may prescribe, shall be provided.
11.	<b>Section 42- Private placement</b>		<p>Proposed changes related to private placement</p> <ul style="list-style-type: none"> <li>• Return of allotment has to be filed within 15 days instead of 30 days.</li> <li>• Money received under the private placement shall not be utilized unless the return of allotment is filed with the RoC.</li> <li>• Private Placement offer letter shall not contain any right</li> </ul>

				of renunciation.				
12.	<b>Section 54- Issue of Sweat Equity Shares</b>			It is proposed to allow issue of Sweat equity shares at an time after registration of the Company. Currently such shares can be issued only after the expiry of one year from the date of commencement of business.				
13.	<b>Section 62- Further issue of share capital</b>			It is proposed that Right issue offer letter can be sent through courier.				
14.	<b>Section 73- Prohibition on acceptance of deposits from public</b>			In case of deposits, it is proposed that an amount not less than 20% of the amount of depositing, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account. Currently at least 15% of such amount is required to be deposited.				
15.	<b>Section 73- Prohibition on acceptance of deposits from public</b>			It is proposed to omit the requirement of deposit insurance.				
16.	<b>Section 73- Prohibition on acceptance of deposits from public</b>			It is proposed that in case a company has made default in repayment of deposits and period of 5 years has elapsed since the date of making the default good, then such company can accept the deposits further.				
17.	<b>Section 74- Repayment of Deposits, etc., accepted before commencement of this act</b>			Where any amount of such deposit or part thereof or interest thereof remains unpaid on the commencement of the Companies Act 2013, it is proposed that such amount shall be repaid within 3 years from the date of commencement or before the expiry of the period for which the deposit was accepted, whichever is earlier. Currently the amount has to be repaid within 1 year or before the expiry of the period for which the deposit was accepted, whichever is earlier.				



18.	<b>Section 89- Declaration in respect of beneficial interest in any share</b>	For the purpose of declaration of beneficial interest , it is proposed that beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—  i. exercise or cause to be exercised any or all of the rights attached to such share; or  ii. receive or participate in any dividend or other distribution in respect of such share.
19.	<b>Section 90- Investigation of beneficial ownership of shares in certain cases</b>	The provisions are proposed to be revamped.
20.	<b>Section 92- Annual Return</b>	The requirement of MGT-9 is proposed to be omitted. The copy of annual return shall be uploaded on the website of the Company, if any, and its link shall be disclosed in the director's report.
21.	<b>Section 96- Annual General Meeting</b>	It is proposed AGM of unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
22.	<b>Section 100- Calling of Extraordinary General Meeting</b>	It is proposed that EGM of wholly owned subsidiary of a company incorporated outside India can be held outside India.
23.	<b>Section 123- Declaration of dividend</b>	It is proposed that the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

			Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.
24.	<b>Section 129- Financial Statement</b>		The requirement of consolidating the accounts of a joint venture is proposed to be omitted.
25.			It is proposed that CEO whether appointed as a Director or not, will sign the financial statement. Currently CEO is required to sign, only if he is also acting as a director.
26.	<b>Section 134- Financial Statement, Board's report, etc.</b>		In case of Directors reports, it is proposed that disclosures which has been provided in the financial statement shall not be required to be reproduced in the report again. Further instead of exact text of the policies, key feature of policies along with its web link shall be disclosed.
27.	<b>Section 135- Corporate Social Responsibility</b>		Eligibility criteria for the purpose of constituting the corporate social responsibility committee and incurring expenditure towards CSR is proposed to be calculated based on immediately preceding financial year. Currently this eligibility is decided based on preceding three financial years. Further it also proposed to empower the Central Government to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135.
28.	<b>Section 137- Copy of Financial Statement to be filed with Registrar</b>		It is proposed to enable the filing of unaudited financial statements of foreign subsidiaries which is not required to get its accounts audited.
29.	<b>Section 139- Appointment of Auditors</b>		The requirement related to annual ratification of appointment of auditors by members is proposed to be omitted.
30.	<b>Section 149- Company to have</b>		It is proposed that 182 days for determining whether a director is



	<b>Board of Directors</b>	<p>resident in India shall be computed with reference to the financial year. Currently it is calculated in reference to previous calendar year.</p> <p>Further it is proposed that in case of new companies, the requirement of period of 182 days shall apply proportionately.</p> <p>In the definition of Independent Director , the words 'pecuniary interest' is proposed to be substituted by "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed"</p>
31.	<b>Section 153- Application for allotment of Director Identification Number</b>	It is proposed to empower the Central Government to recognize any other identification number to be treated as director identification number.
32.	<b>Section 160- Right of persons other than retiring directors to stand for directorship</b>	It is proposed that the requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.
33.	<b>Section 165- Number of Directorship</b>	It is proposed that the directorship in a dormant company shall not be included in the limit of directorships of 20 companies.
34.	<b>Section 167- Vacation of office of director</b>	It is proposed that in case a director incurs any of disqualifications under section 164 (2), he shall vacate office in companies other than the company which is in default. It also seeks to amend section 167 with respect to appeal against conviction order.
35.	<b>Section 177- Audit Committee</b>	<p>It is proposed that instead of listed company , listed public company shall constitute an audit committee.</p> <p>It is proposed that related party transactions other than those prescribed under section 188, if not approved by Audit committee, will require the approval of Board of Directors.</p>
36.	<b>Section 178- Nomination and remuneration Committee and</b>	It is proposed that instead of listed company, listed public company shall constitute a Nomination and Remuneration

	<b>Stakeholders</b>	<b>Relationship</b>	Committee.
	<b>Committee</b>		It is proposed that committee will specify methodology for effective evaluation of performance of Board and committees and individual directors either by the Board, nomination and remuneration committee or an independent external agency and for its review.
37.	<b>Section 185- Loan to directors, etc.</b>		<p>A completely new section 185 is proposed. Some of the key changes are :</p> <ul style="list-style-type: none"> <li>▪ Complete restriction on providing loan , guarantee or security in connection with loan to any director, director of the holding company or any partner or relative of any such director or any firm in which any such director or relative in a partner</li> <li>▪ Loan to parties covered under clause (c) to (e) of explanation to section 185(1) is allowed subject to special resolution of shareholders and certain other prescribed conditions Current exemption provided under section 185(1) continues to remain</li> </ul>
38.	<b>Section 186- Loan and investment by company</b>		<ul style="list-style-type: none"> <li>▪ It is proposed to omit the restrictions on layers of investment companies.</li> <li>▪ It also proposed to exclude employees from the ambit of this section</li> <li>▪ It is proposed that shareholders' approval will not be required where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company.</li> </ul>
39.	<b>Section 188- Related Transactions</b>	<b>Party</b>	It is proposed that the requirement related to restriction on voting by relatives in the general meeting shall not apply to a company



			in which ninety per cent or more members in numbers are relatives of promoters or related parties. It also seeks to provide that non-ratification of transaction shall be voidable at the option of the Board or shareholders, as the case may be.
40.	<b>Section 194- Prohibition on Forward dealings in securities of company by director or Key Managerial Personnel</b>		It is proposed to omit this section
41.	<b>Section 195- Prohibition on Insider trading of securities</b>		It is proposed to omit this section
42.	<b>Section 197- Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits</b>		It is proposed that the approval of the Central Government shall not be required at the time of the payment of remuneration exceeding 11% of the net profits of the company.
43.	<b>Section 366- Companies capable of being registered</b>		It is proposed to allow conversions into companies from partnership firms, LLP, Society etc. with two or more members instead of seven or more members.
44.	<b>Section 403- Fee for Filings, etc.</b>		It is proposed that only document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89 (Declaration in respect of beneficial interest in any share), 92 (Annual Return), 117 (Resolutions and agreements to be filed), 121 (Report on Annual General Meeting), 137 (Copy of financial statement to be filed with registrar) or 157 (Company to inform director identification number to registrar) may be submitted, filed, registered or recorded, as the case may be, within a period of two hundred and seventy days from the expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed. Further it is proposed that in case of documents referred in section 89, 92, 117, 121, 137 or 157 is not submitted,

				filed, registered or recorded, as the case may be, within the period of two hundred and seventy days from the expiry of the period so provided in those sections or in any other case within the period prescribed under the relevant section, then such information, document or fact can be filed on payment of such higher additional fees as may be prescribed.
45.	<b>Section 447- Punishment for Fraud</b>			It is proposed instead of any fraud, only fraud involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to ten years and shall also be liable to a fine which shall not less than the amount involved in the fraud but which may extend to three times the amount involved in the fraud. Further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

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## Union Budget 2016-17 – Indirect Taxes- \* Salient Features



### Focus of the budget in Indirect Tax

- ▶ Additional Resource Mobilization for agriculture, rural economy and clean environment.
- ▶ Measures for promoting affordable housing.
- ▶ Reducing litigation.
- ▶ Reduction in exemptions.

### Amendments in Service Tax

#### A. Finance Act, 1944 (w.e.f FA 2016 gets assent, unless otherwise specified).

##### 1. In Section 65B:

- a) The definition of "approved vocational education course" has been omitted.
- b) Explanation 65B(44) - Activity carried out by a lottery distributor or selling agents of the State Government is leviable to service tax.

##### 2. In Section 66D (w.e.f 01-06-2016):

- a) Service of transportation of passengers by stage carriage, now removed from negative list. Therefore, made taxable but exemption given to non air-conditioned stage carriage in mega notification and abatement of 60% to air conditioned stage carriage.
- b) Services by way of pre-school education removed from negative list. The said exemption has now been shifted in Mega exemption by providing definition of 'educational institutions'.
- c) Services by way of transportation of goods by an aircraft or a vessel from a place outside India upto the custom station of clearance in India, removed from negative list. This exemption has been shifted to mega exemption.

##### 3. In Section 66E- Services of 'Assignment by the government of the right to use the radio frequency spectrum and subsequent transfers thereof' are now taxable. Earlier disputes that it is a sale of intangible goods, now settled.

##### 4. In Section 73 - Normal period of demand now extended from 18 months to 30 months.

##### 5. In Section 75 - 24% interest rate if service tax collected and not paid & 15% if not collected. Higher rate of interest would apply to a person who has collected the amount of service tax from the service recipient but not deposited the same with the Central Govt.

##### 6. In Section 78A - Directors of company not liable to penalty if proceedings concluded under clause (i) of First proviso to Section 76 or clause (i) of the second proviso to Section 78.

##### 7. In Section 89 - Limit of offence increased from Rs. 50 lakhs to Rs. 2 crs for imprisonment and punishment.

**B. Krishi Kalyan Cess @ 0.5%** of the value of taxable services to be levied on all services for the purposes of financing and promoting initiatives to improve agriculture [w.e.f. 01.06.2016].

**C. Service Tax Rules, 1994 (w.e.f. 01-04-2016)**

**i. In Rule 2(d),**

- senior advocates has now been excluded for the purpose of payment under reverse charge for services provided by way of legal service. That is recipient of service will not be liable to pay service tax if provided by senior advocate.
- Recipient of service was liable to pay service tax in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company. This stands deleted now.

**ii. In Rule 6,**

- Now, One person company (whose aggregate value of taxable services provided from one or more premises is Rs. 50 lakhs or less in previous financial year) and HUF are also eligible to pay service tax quarterly. Like, individuals, proprietary firms and partnership firms.
- Now, One person company (whose aggregate value of taxable services provided from one or more premises is Rs. 50 lakhs or less in previous financial year) can pay tax on receipt basis. Like individuals and partnership firms.
- In sub Rule (7A), service tax on Single premium Annuity (Insurance) Policies has been reduced from 3.5% to 1.4% of the premium paid.

**iii. In Rule 7,**

- Insertion of sub-rule (3A) - every assessee shall submit an annual return for the financial year by the 30th November of the succeeding financial year. Format to be specified.
- Insertion of sub-rule (3B) - the Central government may specify assesses who may not be required to submit the annual return.

**iv. In Rule 7B,**

- Insertion of sub rule (2) - Revision of annual return within one month, if filed within due date.

**v. In Rule 7C,**

- Insertion of sub rule (2) - penalty if annual return is submitted after due date, i.e. Rs. 100 per day for period of delay max upto Rs. 20000/- in total.

**D. Mega Exemption notification no. 25/2012 [w.e.f. 01-04-2016, unless otherwise specified]**

**Withdrawn**

- i. Services provided by a senior advocate by way of legal services to a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession has now been made taxable.



- ii. Exemption to Services by a person represented on an arbitral tribunal to an arbitral tribunal has now been withdrawn.
- iii. Services by way of transport of passengers by rope way, cable car or aerial tramway are now taxable. Exemption withdrawn.
- iv. Services by way of construction etc. of original works pertaining to monorail or metro have been now made taxable except where contracts were entered into before 1st March, 2016, on which appropriate stamp duty was paid [w.e.f 01-03-2016].  
**New exemptions:**
- v. Services provided by IIM to the students by way of following education programme except Executive Development Programme has now been exempted [w.e.f 01-03-2016].
  - a) Two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management.
  - b) Fellow programme in Management.
  - c) Five year integrated programme in Management.
- vi. Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme have now been exempted.
- vii. Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training have now been exempted.
- viii. Services provided by way of construction etc. to the, In-situ rehabilitation of existing slum dwellers using land as a resource through private participation under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, are now granted exemption [w.e.f 01-03-2016].
- ix. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana are now granted exemption [w.e.f 01-03-2016].
- x. Services by way of construction etc. of original works pertaining to low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under “Affordable Housing in Partnership” component of the Housing for all (Urban) Mission/Pradhan Mantri Awas Yojana and any housing scheme of a State Government has now been exempted [ w.e.f 01-03-2016].

- xi. Limit of exemption to the charges charged by artist by way of performance in folk or classical art have been increased from Rs.1,00,000 to Rs 1,50,000.
  - xii. Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999) stand exempt.
  - xiii. Services of general insurance business provided under Niramaya Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) stand exempt.
  - xiv. Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory And Development Authority Act, 2013 (23 of 2013) stands exempt.
  - xv. Services provided by Employees' Provident Fund Organisation (EPFO) to persons governed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) stand exempt.
  - xvi. Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market stand exempt.
  - xvii. Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination stand exempt.
- Exemptions earlier withdrawn now provided to old contracts retrospectively:**
- xviii. Services provided to the Government, a local authority or a governmental authority by way of construction etc. of a [w.e.f 01-03-2016]
    - a. civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
    - b. structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or
    - c. residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;under a contract which had been entered into prior to the 1<sup>st</sup> March 2015 and on which appropriate stamp duty where applicable had been paid prior to such date:



Provided that nothing contained in this entry shall apply on or after the 01-04-2020.

**The above exemption was withdrawn w.e.f 01-03-2015. It has again been provided for the next 5 years, to contracts which have been entered into prior to 01-03-2015 so as to avoid loss to the service providers who would have entered into such contracts earlier with the said authorities under the impression that there is no liability of service tax. This exemption will not apply to provision of services under new contracts i.e. after 01-03-2015.**

- xix. Services by way of construction etc. of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date has been granted exemption provided that Ministry of Civil Aviation or the Ministry of Shipping certifies that the contract had been entered into before the 1st March, 2015. **[w.e.f 01-03-2016]**

**The above exemption was withdrawn in 2015. Now it has been provided for next 5 years to contracts entered into prior to 01-03-2015. This Exemption will not be available for services wherein contracts are entered into after 01-03-2015.**

**New entries:-**

- xx. Exemption has been granted to services provided by way of transport of passengers by stage carriage other than air conditioned carriage. Air conditioned stage carriage now taxable. **[w.e.f 01-06-2016]**.
- xxi. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India stand exempt. This exemption has been shifted from negative list to notification now. **[w.e.f 01-06-2016]**

**Amendment in definitions:**

- xxii. Approved vocational educational course has now been defined to mean:-
- i. A course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or
  - ii. A Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.
- xxiii. Educational institution has been defined as an institution providing services by way of pre-school education and education up to higher secondary school or equivalent, education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force, and education as a part of an approved vocational education course.
- xxiv. Senior Advocate has been defined to give the meaning assigned to it in section 16 of the Advocates Act, 1961.

**E. Reverse charge – Notification no. 30/2012 (W.e.f 01-04-2016)**

- i. Services provided by a mutual fund agent or distributor have been excluded from reverse charge mechanism. Therefore, agents to pay service tax directly.
- ii. Services provided by a selling or marketing agent of lottery tickets is covered in reverse charge mechanism only when it is provided in relation to any manner to a lottery distributor or selling agent of the State Government.
- iii. Senior Advocates liable to pay Service Tax directly. No reverse charge on provision of legal services by a senior advocate.
- iv. Any service provided by Government or local authority now liable to reverse charge except renting of immovable property and services listed in 66D (i). Earlier only 'Support Services' were liable for reverse charge.

**F. Abatement - Notification No. 26/2012 (W.e.f. 01-04-2016, unless otherwise specified)**

- i. Cenvat credit on input services now available to services of transport of goods by rail. Cenvat credit on inputs and capital goods still not allowable.
- ii. Abatement of 60% (earlier 70%) to services of transport of goods in containers by rail by any person other than Indian Railways on the condition that Cenvat credit of inputs and capital goods is not availed. Cenvat credit on input services available.
- iii. Cenvat credit on input services now available to services of transport of passengers by rail Cenvat credit on inputs and capital goods still not allowable.
- iv. Service of GTA in relation to transportation of used household goods has been made a separate entry giving abatement of 60%. Earlier it was 70%. Cenvat credit on inputs, input services and capital goods denied. Example: Services of Packers and movers are now taxable at 40%.
- v. Services provided by a foreman of chit fund in relation to chit has been given abatement of 30% on the condition that Cenvat credit on inputs, input services and capital goods is not availed.
- vi. Abatement of 60% provided to transport of passengers by air conditioned stage carriage. Cenvat credit on inputs, input services and capital goods denied. Earlier stage carriage was exempt. Therefore, now air conditioned stage carriage taxable at 40% value.[w.e.f. 01.06.2016]
- vii. Cenvat credit of input services now allowed to services of transport of goods in a vessel. Cenvat credit on inputs and capital goods still not allowable.
- viii. Abatements to Services of a tour operator now modified. Taxable value would be 10% in case of hotel bookings and 30% in all other cases. Earlier, it was 25% in case of package tour, 10% in case of hotel bookings and 40% for all other cases. Therefore, disputes between package tour and other tours been removed. However, abatement of 90% shall not be available in cases where the invoice or bill or challan issued by the tour operator only includes the service charges and does not include the cost of accommodation.
- ix. All construction of a complex, building, civil structure or part thereof now taxable at 30%. Earlier there was 25% and 30% abatement.



**G. Retrospective amendments**

- i. Amendment in Notification No. 41/2012-ST allowing refund of service tax on services beyond the factory or any other place or premises of production or manufacture of said goods, for export of said goods was done vide Notification No. 1/2016-ST, has been given retrospective effect from 01.07.2012. Time period of one month allowed to exporters whose claims were rejected earlier.
- ii. Exemption granted to services provided during the period from 01.07.2012 to 29.01.2014 by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by government. Refund of service tax paid on such services during the period from 01.07.2012 to 29.01.2014 shall be allowed. Application for such refund may be filed within 6 months from date on which Finance Bill, 2016 receives the assent.

**H. Information Technology Software- Dispute of double taxation settled**

- i. Service tax is exempted on transactions involving supply of such media with recorded Information Technology Software bearing RSP, not amounting to sale/deemed sale. Thus, only excise duty is leviable on such transactions.
- ii. Media with recorded ITS which is not required to bear RSP, is being exempted from central excise duty as is equivalent to the duty payable on the portion of value of such ITS recorded on said media, which is leviable to service tax. Excise duty payable only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. Excise and service tax thus, mutually exclusive.

**Amendments in Central Excise**

**A. Central Excise Act 1944 (w.e.f FA 2016 gets assent, unless otherwise specified)**

- i. In Section 11A - Demand in normal period can be made upto 2 years. Presently it is 1 year.
- ii. Introduction of Infrastructure Cess - Passenger motor vehicles liable to 4% Infrastructure cess in addition to excise duties [w.e.f 01-03-2016].
- iii. Interest fixed as 15% under section 11AA [w.e.f 01-04-2016]. Presently it is 18%.

**B. Central Excise Rules 2002**

- i. In Rule 9(2) - Exemption to manufacturers of articles of jewellery for registration of all premises separately. Registration of centralised premises permissible.
- ii. In Rule 8 - Excise duty payable quarterly by manufacturers of articles of jewellery if preceding year aggregate clearances does not exceed 12 crores.
- iii. **In Rule 12 - ER 4 applicable to hundred percent EOU . ER 7 (Annual installed capacity return) withdrawn. Now, ER-1, ER-3 & ER-8 returns can be Revised by the end of the calendar month if filed within due time. ER-4 return can also be revised now within one month from the date of filing if filed within due time.**

- iv. **In Rule 17 – ER – 2 return to be filed by 100% EOU can now be revised by the end of the calendar month if filed within due time.**

**C. Non Tariff Notifications**

- i. Exemption from physical verification of Central Excise registration of manufacturers of articles of jewellery.
- ii. Tariff value of garments fixed as 60%.

**D. Cenvat Credit Rules, 2004 (w.e.f 01-04-2016)**

- i. Definition of ‘Capital Goods’ Modified – Credit of wagons of Chap 860692 allowed – Credit of equipments or appliances used in the office of a manufacturer allowed.
- ii. Definition of inputs modified – credit of all capital goods which have a value upto Rs 10,000 per piece will be allowed as input.
- iii. Credit of Input service distributor extended to outsourced manufacturing unit.
- iv. In Rule 3 – Cenvat credit cannot be used for the payment of infrastructure cess.
- v. In Rule 4 – Sub rule (7) - Cenvat credit paid on charges paid to government for right to use any natural resource shall be allowed in proportion to the no. of years for which such use is granted. If such right is assigned to any other person than the balance credit will be allowed to the extent service tax is payable on such charges.
- vi. In Rule 6 – Modified – To remove disputes – Credit to be reversed cannot exceed the credit allowed as per the Rules. Credit used exclusively for dutiable Goods & taxable services to be allowed in full. Common credit to be allowed in proportion to dutiable goods & taxable services. Exempted services will include services non taxable as per 65B(44).
- vii. In Rule 7 - Input Service Distributor can distribute credit to outsourced manufacturing unit.
- viii. In Rule 9A – Annual return to be filed by 30th nov of succeeding year. ER-5 & ER-6 returns withdrawn.

**E. Other Amendments**

- i. Single registration allowed to two or more inter linked units located within a close jurisdiction except area based exemption availing units.
- ii. Area based exemption withdrawn for New substantial expansions and new industrial units commencing after 01-03-2016, engaged in production of refined gold & silver.

**F. Amendments in Tariff & other notifications**

- i. In notification no. 30/2004 – exemption withdrawn to all goods of Chap 61, 62, 63 (except laminated jute bags falling under 6305, 6309 0000, 6310) bearing a brand name or sold under a brand name and having a retail sale price of Rs



1000 and above. Therefore, only unbranded garments and branded garments having RSP below Rs 1000 still exempt.

- ii. In notification no. 7/2012 - All goods of cotton not containing any other textile material other than those bearing a brand name or sold under a brand name and having a RSP of Rs 1000 and above can pay duty @ 6% with cenvat credit. Branded goods of cotton having RSP of Rs 1000 and above will not have this exemption.
- iii. In notification no. 1/2011 - All branded goods of 61, 62 & 63 (except laminated jute bags falling under 6305, 6309 0000, 6310) having RSP of Rs 1000 and above can pay duty @ 2% without availing cenvat credit. Basically, all branded garments having RSP of Rs 1000 and above dutiable @ 2% without availing cenvat credit.

iv.

	Existing	Amended
All branded goods of 61,62,&63 (except laminated jute bags falling under 6305, 63090000,6310) having RSP ofRs.1000 and above	Exempt	2% without cenvat & 12.5% with cenvat 6% with cenvat (For goods of cotton)
Unbranded garments and branded garments having RSP below Rs 1000	Exempt	Exempt (without cenvat) 12.5% (with Cenvat)

- v. In SSI Exemption - Manufacturers of Articles of jewellery have been provided exemption upto Rs 6 crore if preceeding year turnover does not exceed Rs 12 crores. For the period of March exemption would be Rs 50 lacs.
- vi. **In notification no. 12/2012** - Mega Exemption - Concrete mix and RMC manufactured at the site of construction for use in construction work at such site exempt from duty. This exemption is prospective. Exemption withdrawn on **Articles of jewellery- now dutiable @ 1% without availing cenvat credit.**

\*[Based on the first review of budget]

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# SNAPS DURING BANK AUDIT SEMINAR









SNAPS DURING EXCISE DUTY ON MANUFACTURE SEMINAR







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