BUDGET HIGHLIGHTS 2015 -16

Dhir & Dhir Associates
Advocates & Solicitors
D-55, Defence Colony, New Delhi 110024, India
Tel: +91 11 4241 0000 Fax: +91 11 4241 0091

UNION BUDGET 2015-16

KEY HIGHLIGHTS

CORPORATE LAWS

1. With a view to streamline the taxation regime of Alternative Investment Funds (AIFs), it has been proposed that a pass through status be provided to all the sub-categories of category-I and also to category-II AIFs governed by the regulations of Securities and Exchange Board of India (SEBI).

2. With a view to facilitate relocation of fund managers of offshore funds in India, it has been proposed that the permanent establishment (PE) norms be modified.

3. In respect of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INViTs), it has been proposed that the sponsor be given the same treatment on offloading of units at the time of listing as would have been available to him if he had offloaded his shareholding of special purpose vehicle (SPV) at the stage of direct listing. Further, the rental income arising from real estate assets directly held by the REIT is also proposed to be allowed to pass through and to be taxed in the hands of the unit holders of the REIT.

4. With a view to providing a uniform method of computation of period of stay in Indian for the purposes of determination of 'resident' status in the case of a India seafarer, whether working on Indian-ship or foreign-ship, it has been proposed to provide an enabling power to Central Board of Direct Taxation ("CBDT") to prescribe the same in the rules.

5. With respect to the Employees Provident Fund ("EPF"), it has been proposed that employees need to be provided with two options:

   (i) EPF; or

   (ii) New Pension Scheme (NPS)

Further, for employees below a certain threshold of monthly income, the contribution towards EPF should be optional and this shall not affect or reduce the employer's contribution towards the EPF.

TAX PROPOSALS-DIRECT TAX

1. It has been proposed that the rate of corporate tax should be reduced from 30% (thirty percent) to 25% (twenty five percent) over the next 4 (four) years.

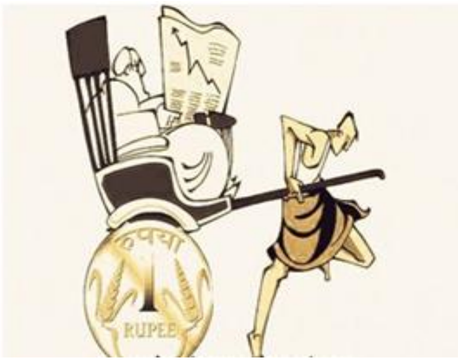
2. The implementation of General Anti Avoidance Rule (GAAR) has been deferred by 2 (two) years and shall be applied to investments made on or after April 1st, 2017.

3. The rate of income tax on royalty and fees for technical service is proposed to be reduced from 25% (twenty five percent) to 10% (ten percent).

4. Profits corresponding to income of Foreign Institutional Investors ("FIIs") accrued from capital gains on transactions in securities, which are liable to tax at a lower rate, shall not be subject to Minimum Alternative Tax ("MAT").

5. Considering amendment of sec.9 of the Income Tax, wherein it was clarified that if an asset, being a share of, or interest, in a company or an entity derives its value directly or indirectly, substantially from an asset situated in India, the gain arising from transfer of such share or interest shall be taxable in India, further amendments to the provisions of the income tax have been proposed so as to provide that:-

   (i) The share or interest shall be deemed to derive its value substantially from the assets located in India, if on the specified date, the value of such assets represents at least 50% (fifty per cent) of the fair market value of all the assets owned by the company or entity. However, the indirect transfer provisions would not apply if the value of Indian assets does not exceed INR 10 Crores. Further, the principle of proportionality will apply to the taxation of gains arising from indirect transfer of Indian assets;



   (ii) The Indian entity shall be obligated to furnish information relating to the offshore transactions having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of non-compliance, a penalty is also proposed;

   (iii) The indirect transfer provisions shall not apply in a case where the transferor of share or interest in a foreign entity, along with his associated enterprises, neither holds the right of control or management nor holds voting power or share capital or interest exceeding 5% (five percent) of the total voting power or total share capital in the foreign company or entity, directly or indirectly, holding the Indian assets;

6. The capital gains shall be exempt in respect of transfer of share of a foreign company deriving its value, directly or indirectly, substantially from the shares of an Indian company, under a scheme of amalgamation or demerger.

7. An amendment to the provisions of section 92BA of the Income-tax Act has been advised in order to increase the threshold limit for applicability of transfer pricing regulations to specified domestic transactions from INR 5 Crores to INR 20 Crores.

TAX PROPOSALS-INDIRECT TAX

1. It has been proposed that the basic customs duty on certain inputs, raw materials, intermediates and components in 22 (twenty-two) items should be reduced in order to minimize the impact of duty evasion.

2. It has been proposed that wealth tax should be abolished and replaced with an additional surcharge of 2% (two percent) on the super rich with taxable income of over INR 1 Crore.

3. It has been advised that the Education cess and the Secondary and Higher education cess be incorporated in the Central Excise Duty. The general rate of such Central Excise Tax to be rounded off to 12.5% (twelve point five percent).

4. The Ad-valorem rates of excise duty lower than 12% (twelve percent) and those higher than 12% (twelve percent) to remain the same, barring a few exceptions.

5. Central Value Added Tax credit on inputs and input services to be increased from 6 (six) months to 1 (one) year.

6. It has been proposed that the Service Tax plus Education Cess, should be increased from 12.36% (twelve point three six percent) to 14% (fourteen percent).

BANKING & FINANCE

1. To support the agriculture sector with the help of effective and hassle- free agriculture credit, it is proposed to allocate Rs. 25,000 crore in FY 2015-16 to the corpus of Rural Infrastructure Development Fund (RIDF) set up in NABARD; Rs. 15,000 crore for Long Term Rural Credit Fund; Rs. 45,000 crore for Short Term Cooperative Rural Credit Refinance Fund; and Rs.15,000 crore for Short Term RRB Refinance Fund.

2. In order to support and provide easy access to credit for small manufacturing trading or service business, it is proposed to create a Micro Units Development Refinance Agency (MUDRA) Bank, with a corpus of Rs. 20,000 crore, and credit guarantee corpus of Rs. 3,000 crore. MUDRA Bank will refinance Micro-Finance Institutions through a Pradhan Mantri Mudra Yojana.

3. Further, to improve the liquidity in MSME Sector, the Finance Minister has declared that the Government is in the process of establishing an electronic Trade Receivables Discounting System ('TReDS') which shall finance trade receivables of such MSMEs.

4. The Finance Minister also proposed a comprehensive Bankruptcy Code in FY 2015-16, that will meet global standards and provide necessary judicial capacity.

5. In order to bring parity in the regulation of the Non-Banking Financial Companies (NBFC) with other financial institutions in the matter relating to recovery, it is proposed that NBFCs registered with RBI and having asset size of Rs. 500 crore and above will be considered for notifications as 'Financial Institution' in terms of the SARFAESI Act, 2002.

6. The Finance Minister has announced the establishment of a National Investment and Infrastructure Fund (NIIF) with an annual flow of Rs. 20,000 crore to it. This will enable the Trust to raise debt, and in turn, invest as equity, in infrastructure finance companies such as the IRFC and NHB.

7. The Finance Ministry further announced the proposal to permit tax free infrastructure bonds for the projects in the rail, road and irrigation sectors.

8. Recognizing that deepening of the Indian Bond Market as one of the vital factor in promoting investment in Indian, the Finance Minister announced the setting up of Public Debt Management agency (PDMA) to bring both external borrowings and domestic debt under one roof.

9. To strengthen the regulation of commodity forward markets and reduce wild speculation, a proposal to merge the Forwards Markets Commission with SEBI has been put and enabling legislation, amending the Government Securities Act and the RBI Act is proposed in the Finance Bill, 2015.

10. The Finance Ministry announced the proposal to create a Task Force to establish a sector-neutral Financial Redressal Agency that will address grievances against all financial service providers, for protecting the consumer interest in the capital market.

11. Keeping in view, the need to increase investments from all sources, it is further proposed that Foreign Investments in AIFs will be allowed.

12. Further, to simplify the procedures for the Indian Companies to attract foreign investments, it has been proposed to do away with the distinction between different types of foreign investments, especially between foreign portfolio investments and foreign direct investments, and replace them with composite caps.

13. In order to improve the Governance of Public Sector banks, the Finance Ministry has announced the establishment if of an autonomous bank Board Bureau. The Bureau will search and select heads of Public Sector banks and help them in developing differentiated strategies and capital raising plans through innovative financial methods and instruments. This would be an interim step towards establishing a holding and investment Company for Banks.

INFRASTRUCTURE

1. An increase in investment in infrastructure by Rs. 70,000 crore in the year 2015-16 over the year 2014-15 has been proposed from the Centre's funds and resources of CPSEs. An increased outlay on both the roads and the gross budgetary support to the Railways by Rs. 14,031 crore and Rs. 10,050 crores respectively has been proposed.

2. The setting up of a National Investment and Infrastructure Fund (NIIF) has been proposed with an annual flow of Rs. 20,000 crore. This will enable the Trust to raise debt, and in turn, invest as equity, in infrastructure finance companies such as IRFC and NHB. The infrastructure finance companies can then leverage this extra equity, manifold.

3. Tax-free infrastructure bonds for projects in roads, rail and irrigation projects have been proposed.

4. Additional 100,000 km of road is required to be build.

5. Ports in public sector will be encouraged to corporatize under Companies Act to attract investment and leverage the huge land resources.

6. A proposal has been floated for establishment of the ATAL Innovation Mission (AIM) in NITI. AIM has been proposed to be an Innovation Promotion Platform involving academics, entrepreneurs and researchers and draw upon national and international

experiences to foster a culture of innovation, R&D and scientific research in India. Initially, a sum of Rs. 150 crore has been earmarked for this purpose.

7. The Government has proposed to set-up 5 new Ultra Mega Power Projects, each of 4000 MWs in the plug-and-play mode. The Government endeavors to put in place all clearances and linkages before the project is awarded by a transparent auction system. This shall unlock investments to the extent of Rs. 1 lakh crore. The Government also plans to consider similar plug-and-play projects in other infrastructure projects such as roads, ports, rail lines, airports etc. The commissioning of the second unit of Kudankulam Nuclear Power Station in 2015-2016 was also announced.

8. There has also been a proposal to revisit and revitalize the PPP mode of infrastructure development where government will bear larger part of the risk.

NEW LEGISLATION

1. It has been recommended that a new comprehensive law be enacted with respect to the black money deposited abroad. The bill in this regard is proposed to be introduced in the current Session of the Parliament.

2. With regard to dealing with domestic black money, a new and more comprehensive Benami Transaction (Prohibition) Bill is to be introduced in the current Session of the Parliament which shall enable confiscation of benami property and provide for prosecution. Further, in respect to this, quoting of one's Permanent Account Number ("PAN") is to be made mandatory for any purchase or sale exceeding the value of INR 1 Lakh.

MISCELLANEOUS

1. In an attempt to generate greater employment opportunities, benefit of deduction for employment of new regular workmen to all business entities will be extended; the eligibility threshold of minimum 100 (one hundred) regular workmen will be reduced to 50 (fifty).

2. The proposal for additional depreciation @ 20%(twenty percent) has been allowed on new plant and machinery installed by a manufacturing unit or a unit engaged in generation and distribution of power. However, if the asset is installed after 30th September of the previous year only 10% (ten percent) of the additional depreciation is allowed. It has been proposed that the remaining 10% (ten percent) of the additional depreciation be allowed in the subsequent previous year.