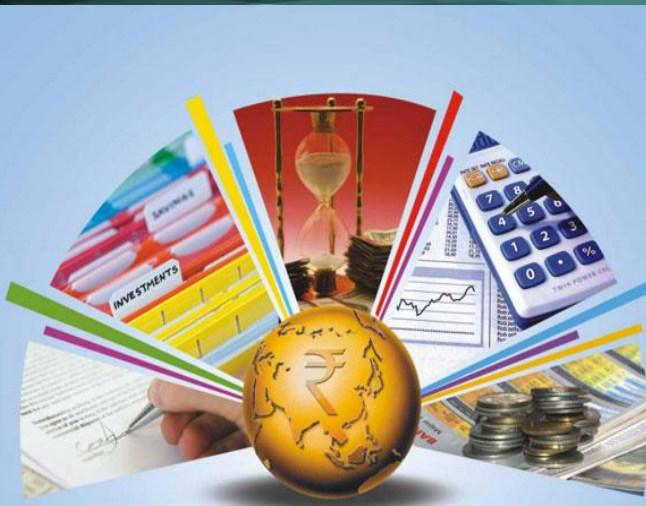


BUZZ QUARTERLY



Global M&A deals have cooled off this first quarter of 2016, down 24% from the corresponding period last year. The deals tallied USD 597.4 billion recording the lowest first quarter value in two years. Some of the top deals include China National Chemical's USD 46 bn acquisition of Syngenta AG, Shire Plc's USD 35.2 bn acquisition of Baxalta Inc, Johnson Control Inc's USD 16.5 bn acquisition of Tyco International Plc, etc.

Treading similar waves, in India too M&A witnessed a dip in terms of value this first quarter. A positive development has been the upswing in domestic M&A and outbound deals. Some of the key transactions include USD 1.3 bn joint investment in a Russian oil-field by Indian Oil Corporation, Oil India and Bharat Petroleum, Orange SA's USD 900 mn acquisition of Bharti Airtel's operations in two countries in West Africa, Birla Corp's USD 710 mn acquisition of Reliance's cement business, etc.

On regulatory front, foreign investment beyond 26% and up to 49% in life insurance and pension sectors has been relaxed from government approval route to automatic route. Government has come out with a much awaited clarification on foreign investment in e-commerce – which is being permitted only for marketplace e-tailers. For not-for-profit organizations, the Government has relaxed definition of foreign source to now exclude companies in India having foreign investment beyond 50%.

The MCA has issued another set of clarifications on CSR. Relaxations have been made in criteria for names of new companies and for delisting of equity shares by small companies.

In the direct taxes, the CBDT has clarified non-applicability of DDT on buy-back of unlisted shares for past years, TDS on certain payments in the media sector and applicability of India-UK DTAA on partnership firms. The CBDT has also issued guidelines on tax implications on sale of listed shares / securities and on determination of business connection of offshore funds having fund managers in India.

In Indirect taxes, a new relaxed procedure has been specified for import of goods for events & exhibitions and clarifications issued on Swachh Bharat Cess.

In view of the upsurge in startup ecosystem, the Government of India has announced Startup India Action Plan encompassing several areas to support and incentivize the setting up of technology led startups.

The Finance Minister introduced Budget 2016 on 29th Feb, 2016. We have presented a brief snapshot of budget proposals impacting M&A, companies, non-residents and startups.

This newsletter aims to capture the key M&A of Q1 of 2016 as well as the major tax & regulatory developments of this quarter. We hope you find the same an interesting read.

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The year 2016 started off on a subdued note for M&A in India. January saw 44 transactions worth USD 1.7 billion while in February, there were 37 transactions worth USD 1.83 billion.

Compared to same period in last year, while deal volumes have been similar, deal values have shrunk by 50% in January and by 32% in February. This is attributed because of sharp decline in cross-border activity and fewer big-ticket transactions. However, there has been a strong surge in domestic M&A with deal values tripling in January and increasing by about 50% in February.

Sector-wise, IT and ITeS continues to be a hotbed of deals with manufacturing, telecom, and hospitality & leisure also leading the charts.

Few M&A deals of Q1 - 2016

Samsonite, world's largest bag & travel luggage company and the second largest player in the Indian luggage market has signed a definitive agreement to acquire its rival Tumi for USD 1.8 billion.

Indian Oil Corporation, Oil India and Bharat Petroleum have signed agreement to buy 29.9% stake aggregate in Rosneft's Tass-Yuryakh oil field for USD 1.3 billion. The oil field has proven reserves of 137 million tons.

Orange SA, the leading French mobile telecommunications operator, has signed an agreement to acquire 100% of Bharti Airtel's operations in two countries of West Africa for an estimated USD 900 million.

Birla Corp has signed an agreement to acquire Anil Ambani's cement business, for about USD 710 million. The cement business has a capacity of 5.5 mtpa. The deal is subject to approval of CCI and other regulators. This deal comes after Lafarge India conveyed its inability to sell two assets to Birla Corp, the deal for which was signed last year in August.

Bharti Airtel has signed a definitive agreement with Videocon to acquire rights to use 1800 MHz spectrum in six circles for USD 660 million. This deal comes after Idea Cellular called off its agreement with Videocon to acquire rights to use spectrum in two circles for USD 500 million.

In its 2nd largest overseas acquisition, Wipro Ltd has signed a definitive agreement to acquire HealthPlan Services, an independent technology & Business Process as a Service (BPaaS) provider in US Health Insurance market, for USD 460 mn.

RMZ Corp has signed a definitive agreement with Essar Group to acquire the latter's Equinox Business Park, a 1.25 mn sq ft office space in Bandra-Kurla complex, Mumbai for about USD 353 million.

Sun Pharmaceuticals has acquired 14 established prescription brands from Novartis in Japan for USD 293 million.

General classifieds portal Quikr acquired real estate portal CommonFloor for about USD 200 million. CommonFloor has been merged with QuikrHomes – the real estate vertical of Quikr.

Ctrip.com, China's largest travel site, has signed an agreement to invest about USD 180 million through convertible bonds in MakeMyTrip, India's largest online travel agency, beneficially owning 26.6% of MakeMyTrip's outstanding shares.

Times Internet, the digital arm of BCCL, has acquired US-based cricket broadcaster Willow TV International Inc for about USD 100 million.

Private equity investments in India started on a high note this year. January saw USD 1.12 invested across 97 transactions while in February, there were 94 deals worth USD 1.19 billion.

Compared to same period in last year, overall both deal volumes and deal values have registered an encouraging increment. There was a small decline in average investment size in January which was offset by a rise in the number of transactions, and February saw four large investments made above USD 100 mn each, compared to only one in Feb last year.

Sector-wise, e-commerce continued to grab eyeballs of investors besides banking & financial services and infrastructure which also saw big-ticket investments.

Few PE deals of Q1 - 2016

Fairfax has agreed to buy a 33% stake in Bangalore International Airport Ltd from GVK Power & Infrastructure Ltd for USD 321 million. The transaction is expected to be completed by mid of the year.

Existing investor Naspers, the South-Africa based internet & media firm, has invested USD 250 million in the ibibo group, which owns integrated online travel properties such as goibibo.com and online bus ticketing platform redbus.in.

E-commerce marketplace Snapdeal raised USD 200 million from Canada-based Ontario Teachers' Pension Plan, Singapore-based firm Brother Fortune Apparel and Iron Pillar.

Dubai based Abraaj Group has acquired 72% stake in Hyderabad-based CARE Hospitals from current PE owner Advent International for USD 195 mn. CARE Hospitals is the fifth-largest hospital chain in India.

CPI Investment Board has bought under 1% additional stake in India's fourth largest lender Kotak Mahindra Bank from Japan's Sumitomo Mitsui Banking Corporation for USD 170 million.

Automobile classifieds portal CarTrade.com raised USD 145 million from Temasek Holdings, US-based March Capital and existing investor Warburg Pincus. This is the second-largest funding deal in online classifieds segment in India.

A JV of Kedaara Capital and Swiss investment firm Partners Group has acquired housing finance arm of Au Financiers (I) Ltd for USD 139.3 million. Au Financiers is one of 10 firms to get in-principle nod from RBI to start small finance bank.

PE firm KKR acquired around 9.95% in Max Financial Services, the newly demerged entity of the Max Group that owns its life insurance arm, for USD 139 million.

US PE firm First Reserve International has signed a binding letter of offer with Crompton Greaves Ltd for acquisition of the latter's power business in Europe, North America and Indonesia for USD 126 million.

I Squared Capital has signed a share purchase agreement to acquire Western UP Tollway Ltd from NCC Ltd, Gayatri Projects Ltd and its subsidiary Gayatri Infra Ventures for an enterprise value of USD 85 million.

World's largest alternative investment asset manager Blackstone Group has invested USD 70 million in an ongoing office park project of Salarpuria Sattva Group. The project is a 6 mn sq ft office space in Hyderabad.

FEMA & FDI – Key Updates

- **Online Reporting of FDI now mandatory:** Forms ARF and FC-GPR are used to report FDI inflows and issuance of eligible instruments to overseas investors against FDI inflow respectively – their online filing was enabled from 19th Feb, 2015. Form FC-TRS is used for reporting transfer of securities between resident and person resident outside India – its online filing was enabled from 24th Aug, 2015. The filing of these forms online was optional but now has been mandatory w.e.f 8th Feb, 2016.
- **FCRA:** Foreign Contribution Regulation Act (FCRA) governs receipt of donations by NGOs from foreign sources. Key updates in this quarter are:
 - **Extension of last date for filing renewal application:** FCRA, 2010 came into effect from 1st May, 2011. and repealed the old FCRA, 1976. In the new act, registration certificates are valid for five years from date of issuance are to be applied for renewal six months before the expiry. Consequently, all entities registered on or before 1st May, 2011 were required to file application for renewal of registration on or before 31st Oct, 2015. Due to launch of new website, Government had extended last date of filing such application to 15th Mar, 2016. To provide further relaxation, Government has extended this last date to 30th June, 2016 and extended validity of existing registration certificates to 31st Oct, 2016.
 - **Definition of foreign source:** Earlier, Indian company with more than 50% foreign shareholding were covered under the ambit of foreign source and hence could donate only to such not-for-profits which were FCRA compliant.

It is now being provided vide the Budget, 2016 that foreign source shall not include a company having majority foreign shareholding so long as such foreign shareholding is within the sectoral FDI limits.

This amendment would now enable companies with foreign shareholding and required to fulfill CSR to partner with several not-for-profit organizations including those without FCRA registration.
- **Master Directions of RBI:** RBI has started issuing master directions on all regulatory matters beginning Jan, 2016. These have been issued to streamline required procedure for compliance and provide clarity in regulatory communications. Master directions consolidate instructions on rules & regulations framed by RBI under various acts. These shall be simultaneously updated as and when there is any change in rules / regulations / policy. They shall be supplemented by FAQs wherever necessary. The existing set of master circulars issued on various subjects will stand withdrawn with the issue of master direction on the subject. RBI has issued a total of 20 master directions so far on commercial banking and foreign exchange management.
- **FDI in e-commerce:** Government provided a much awaited clarity on foreign investment policy through e-commerce platform. While the jury is still out as to its effectiveness in augmenting the startup atmosphere and its impact on existing players, here are the key highlights of the guideline issued:
 - 100% FDI has been permitted in marketplace model; no FDI is permitted in inventory based model
 - Marketplace has been defined as e-commerce entity providing an IT platform on digital and electronic network to act as facilitator between buyer and seller
 - Payments for sale may be facilitated in conformity with the guidelines of RBI
 - E-commerce entity providing marketplace will not exercise ownership over inventory
 - At most only 25% of sales can be affected from one vendor or its group companies through the marketplace
 - E-commerce entities cannot influence sale price of goods / services directly / indirectly
- **Liberalization in FDI in insurance and pension sectors:** Currently, foreign investment in insurance and pension sectors is permitted up to 49%. Off this, foreign investment up to 26% is under automatic route and from 26% up to 49% is under Government approval route. The same has been amended to provide that foreign investment up to the whole of 49% is now being covered under automatic route.

Companies Act 2013 key updates

- **SEBI delisting of equity shares in small companies** – SEBI has relaxed the provisions in relation to small companies – which are exempt from following detailed procedure for delisting.

Factor	Earlier requirement	Revised requirement
Trading of equity shares on any recognized stock exchange in last one year preceding date of board meeting of approval of delisting	No trading should've occurred in last one year	Number of equity shares traded is less than 10% of total shares during the last one year
Minimum exit price offered to public shareholders	Arrived at in consultation with merchant banker	Determined in accordance with SAST regulations (as required for non-small companies)

- **Clarifications on CSR** – MCA has issued a circular containing certain FAQs on CSR. Key highlights are:

- Holding / subsidiary of a company does not have to comply with CSR norms unless such holding / subsidiary itself fulfills requisite criteria
- No specific exemption is provided to Section 8 companies. Hence, if such companies fulfill requisite criteria, they are required to undertake CSR activities
- In case of foreign company, balance sheet filed with ROC shall contain an annexure regarding report on CSR
- Contribution in kind cannot be monetized to be shown as CSR spend
- Excess CSR spend of one year cannot be carried forward to subsequent years and adjusted against CSR expenditure of those subsequent years
- Board of directors of company is free to decide on carrying forward of unspent amount out of minimum CSR spend. However, such carried forward amount should be over and above the next year's CSR allocation
- Government of India has no role to play in engaging external experts for monitoring quality, efficacy and impact of CSR spend. Board or CSR committee are competent to engage third party for impact assessment of its CSR programme.
- Monetization of pro bono services of employees would not be counted towards CSR expenditure

- **Relaxation for names of companies** – MCA has relaxed criteria for undesirable names for companies. The following criteria have been **removed**:

- Name to be in consonance with principal objects of the company if there is some indication of objects in the name
- Non-availability of abbreviated name based on names of promoters
- Name is intended or likely to produce misleading impression regarding scope / scale of its activities
- If a company has changed its activities which are not reflected in its name, company to change its name in line with the new activities
- If name of company includes name of any person (other than promoters / their close blood relatives), NOC from such person is required; in case of such person being relative of promoter(s), proof of relation to be furnished

- **Buy-back of shares by private and unlisted public companies** – As per extant provisions, for buy-back of shares by private and unlisted public companies, the auditors are required to certify the members about certain aspects. One of these aspects is that the audited accounts, basis which calculations for buy-back are being done, are not more than 6 months old from the date of offer document.

In view of difficulty in compliance with this provision, an exception has been added to allow the use of un-audited accounts, not older than 6 months from the date of offer document. Further, the un-audited accounts are subject to limited review of auditors.

Direct Tax

- **Clarification on applicability of India-UK DTAA to partnership firms** – India-UK DTAA was amended in Feb, 2014 to delete the exclusion of UK partnership firms in the definition of ‘person’. This was done to provide clarity on applicability of the DTAA to UK partnership firms which hitherto had been facing tax litigations.

It has been clarified by CBDT that even though ‘partnership’ has not been specifically included in the amended definition of ‘person’, provisions of the DTAA apply to partnership, estate or trust to the extent income of such entity is subject to tax, either in India or UK as per its residential status, either in its own hands or in the hands of its partners / beneficiaries.

- **Non-applicability of DDT on buy-back of unlisted shares** – Section 115QA was introduced by Finance Act, 2013 to provide an additional income tax @ 20% on distributed income by a company on buyback of unlisted shares. Further, as per extant provisions, consideration received on buyback is specifically excluded from definition of dividend and is taxable as capital gains.

However, for transactions occurring before applicability of Section 115QA, conflicting interpretations emerged re-characterizing purchase consideration received by shareholders due to buyback as dividend and subjecting the same to DDT.

CBDT has now clarified that for such prior periods also, consideration would be taxed as capital gains in the hands of shareholders and not dividend.

- **Clarifications on TDS issues** –
 - **On payments for producing content / programme for telecasting:** Where such content / programme is produced as per specifications of broadcaster / telecaster and the copyright of the content also gets transferred, this would be a works contract and TDS @ 2% would apply
 - **On payments by media companies to ad companies for procuring / canvassing ads:** This is with respect to fees/charges taken / retained by ad companies from media companies. No TDS applies in such case since contract between media company and ad company is on a principal-to-principal basis and not principal-to-agent basis.

- **Taxability on sale of listed shares / securities** – Recognizing that majority of transactions related to shares/securities are in respect of listed ones and to reduce litigation & uncertainty, CBDT has issued following instructions to determine nature of income generated on sale of listed shares/securities:

- Regardless of period of holding, where assessee itself opts to treat them as stock-in-trade, income on their transfer would be business income
- If these period of holding is at least 12 months and assessee treats income arising as capital gains, then this would not be disputed and assessee wouldn't be allowed to adopt a different stand for subsequent sale / transfer
- In all other cases, existing instructions would apply

- **Rules for residential status of offshore funds** – Finance Act, 2015 introduced special taxation regime to facilitate location of fund managers of offshore funds in India. Under this, fund management activity carried out through an eligible fund manager in India by an eligible investment fund would not lead to a business connection in India of the fund, hence preventing tax residency of the fund in India.

To support the same, rules have now been specified. Some key provisions are

- A pre-approval mechanism has been prescribed under which a fund can seek approval, at its option, from CBDT and once approved, the fund would enjoy the benefits of the regime unless approval is withdrawn under limited circumstances
- Where the investment in the fund has been made directly by an institutional entity, the manner of determination of number of members and participation interest in the fund by looking through the entity has been specified
- Relaxation has been provided from investor diversification condition in period of 18 months in setting up phase of the fund and in period of 1 year in winding up phase of the fund
- Few circumstances have also been specified when eligibility of the fund would not be or would be impacted
- **Interest income to be included in ITR** – CBDT vide a press release has advised taxpayers, submitting form 15G / 15H to show interest income in ITR including such interest also on which no TDS has been deducted, unless such interest is exempt or total income of taxpayer is less than basic exemption limit.

Indirect Tax

- **New procedure for importation of goods for events, exhibitions** – Key highlights of the new procedure are:
 - Goods can now be imported through a self-declaration. Earlier, approval of Ministry / ITPO would be required.
 - For import of precious, semi-precious stones and jewelry, the importer shall submit a certificate of Gems & Jewelry Export Promotion Council.
 - Bond required to be executed by importers shall have value equal to the goods being imported. Also, from now onwards, a bank guarantee / cash deposit equal to 110% of the import duty on such goods (except those exempted) shall be required to be furnished.
 - Goods shall be exported within 6 months from date of order permitting clearance of the goods. Earlier, the period of 6 months would be calculated from closure of the event.
- **Regarding SBC** – CENVAT credit rules have been amended to provide that no credit of any input tax can be utilized for payment of Swachh Bharat Cess (SBC). Further, a rebate shall be available for SBC paid on input services which are utilized for export services.
- **Changes proposed in the Union Budget, 2016** –
 - A manufacturer would be given the facility of revising central excise return, as currently available under service tax
 - In case of digitally signed invoices, manual attestation of copy of invoice, meant for transporter, is not required
 - CENVAT credit would be available to service providers providing services of transportation of goods by a vessel from India to abroad
 - Rule 5 of Point of Taxation Rules specifies applicability of payment of tax in case where a service is taxed for the first time. It has been clarified that this rule would also apply in case of a new levy/tax on services
 - It has been provided that IT software on media bearing Retail Sale Price (RSP) is exempted from service tax provided central excise duty is paid on RSP as per applicable provisions. Levy of excise duty and service tax is mutually exclusive
 - Exemptions have been withdrawn on service provided by senior advocate to an advocate / partnership firm of advocates providing legal service and on service provided by a person represented on arbitral tribunal to an arbitral tribunal. Service tax would be payable under forward charge on such services.
 - A One Person Company can now pay service tax on quarterly and on receipt basis.
- Effective 1st Apr, 2016, any service (and not only support services) provided by Government or local authorities to business entities are leviable to service tax. Further, service tax in such case would be payable on reverse charge basis
- Right to use radio-frequency spectrum and subsequent transfers thereof is being declared as a service.
- Further, CENVAT credit of service tax, paid on amount charged for assignment by Government / any other person of a natural resource (like radio-frequency spectrum, mines, etc.) would be spread over the period of time for which the rights have been assigned.
- Besides half-yearly returns, certain assesseees (threshold limit yet to be notified) would now be required to file annual service tax returns by 30th November of succeeding financial year.
- A Krishi Kalyan Cess is being levied on services w.e.f 1st June, 2016 at the rate of 0.5%. Thus, effective rate of service tax would be 15% from 1st June, 2016 onwards. Unlike SBC, credit of Krishi Kalyan Cess paid on input services would be allowed to be used for the payment of Krishi Kalyan Cess liability.
- Excise duty of 1% (without CENVAT credit) and 12.5% (with CENVAT credit) is being levied on articles of jewelry (except plain silver jewelry). Further, for a financial year, exemption on clearances up to INR 60 million would be granted to jewelry manufacturer if aggregate domestic clearances in preceding financial year were less than INR 120 million.
- **Abatement:**
 - On transport of passengers/goods by rail and on transport of goods by vessel, CENVAT credit of input services would now be allowed
 - Uniform rate of abatement @ 70% would be applicable on services by way of construction of residential complex, building, civil structure, or a part thereof irrespective of carpet area of all units and amount charged for such units
 - On services by tour operator in respect of tour only for arranging / booking accommodation retained at 90%; in respect of any other tour, abatement has been rationalized from 75% and 60% to 70%
 - New Entry - On transport of goods in containers by rail by any person other than Indian Railway a lower rate of abatement @ 60% is being provided with credit of input services allowed
 - New entry - on shifting of used household goods by a Good Transport Agency, abatement @ 60% without any CENVAT credit



What qualifies a "Startup"

- Private limited company / Registered Partnership firm / LLP
- Applicable for up to 5 years from the date of its incorporation / registration
- Turnover \leq INR 250 million
- Working towards Innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property

Notes:

- A proprietorship or public limited company is not eligible as startup
- A one person company, being a private limited company, is recognizable as startup entity

Registration to avail key benefits

Register on Startup India Mobile App / Portal to avail following benefits:

- Easy registration procedure with MCA / Registrar of firms
- Easy compliance filing and obtaining information on clearances/approvals/registrations required
- Self-certification of compliance with 9 labor and 3 environment laws
- No requirement of prior experience / turnover while applying tenders of Govt. / PSUs
- Fast track exit possible
- Tax incentives / faster & cheaper IPR registration only after being recognized as eligible business by an inter-ministerial board



For Existing Businesses

An existing entity that meets the criteria of a startup can visit the Startup portal and get itself recognized for various benefits. However, formation of a new entity by splitting up or reconstruction of an existing business would not make the new entity eligible to be recognized as a startup.

Registration Documents

For registering as a startup, any one of following supporting document is required to be uploaded along with registration application on Startup India portal or mobile app:

- Recommendation from any incubator established in a post-graduate college in India
- Letter of support from an incubator funded by Central / State Govt.
- Recommendation from any incubator recognized by Govt.
- Letter of funding of at least 20% equity from SEBI registered incubation fund/ angel fund / PE / accelerator / angel network
- Letter of funding from Central / State Govt.
- Patent filed & published in Journal by the India Patent Office in areas affiliated with the nature of business being promoted



Similarly, any one of the above documents is to be submitted to inter-ministerial board for availing tax / IPR benefits

** List of recognized incubators and SEBI registered funds is available on Startup India Portal for reference.*

Budget Proposals – applicable from 1st Apr, 2016

■ *Tax Holiday*

To provide an impetus to start-ups and facilitate their growth in initial phase of their business, a deduction of 100% of profits and gains derived by an eligible business is being provided. It can be availed for any three consecutive assessment years out of its first five years. MAT will apply in such cases. This benefit would be available to an eligible start-up which is being defined as a company incorporated on or after 1st Apr, 2016 and before 1st Apr, 2019 carrying on eligible business.

■ *Capital Gains invested in a Start-up made exempt*

Exemption of long term capital gains is being provided to an individual / HUF who invests the proceeds on transfer of residential property to subscribe shares of an eligible startup. For this, the individual / HUF must hold more than 50% shares of the start-up and the start-up company should utilize the amount invested to purchase new assets before due date of filing ITR. In the case of technology driven start-ups certified by Inter-Ministerial Board, 'new assets' shall include computers and computer software. Applicable from 1st April 2016.

■ *Capital Gains invested in Government's Fund of Funds made exempt*

To promote start-up ecosystem, Government would establish a Fund of Funds with proposed corpus of INR 25 billion annually for four years. Long term capital gains up to INR 5 million would be exempt, in aggregate for all four years put together, when such gains are invested in the Fund of Funds. Applicable from 1st April 2016.

■ *Concessional Tax Regime for income from patents*

To encourage indigenous research & development activities and to make India a global R & D hub, income by way of royalty from patents is proposed to be taxed at a concessional rate of 10% (plus applicable surcharge and cess). This would apply to income from worldwide exploitation of patents developed and registered in India.

RBI's clarifications regarding relaxations to start-ups

■ *Acceptance of foreign currency payments*

A startup in India with overseas subsidiary is permitted to open foreign currency account abroad to pool foreign exchange earnings out of exports / sales. The overseas subsidiary of startup has also been permitted to pool its receivables arising from transactions with residents in India and non-residents abroad.

The balance in the said account as due to the Indian startup has to be repatriated to India within prescribed period of 9 months as applicable for export proceeds realization.

The startup can also avail the facility of Online Payment Gateway Service Providers for realizing receivables of its overseas subsidiary or making repatriation up to USD 10,000 or up to such limit as may be permitted by RBI from time to time.

For the above, it is mandatory to have an appropriate contractual arrangement between the startup, its overseas subsidiary and its customers.

■ *Issue of shares for non-cash consideration*

RBI has restated that in the case of startups, shares can be issued for non-cash consideration in following ways:

- i. Sweat Equity shares: Shares in this case have to be issued as per a scheme drawn in terms of:
 - SEBI Regulations in respect of listed companies; OR
 - Companies (Share Capital and Debenture Rules), 2014 in respect of other companies
- ii. Against legitimate payments: In case of amounts payable by investee company to investor for which no prior permission of the Government or RBI is required, following conditions are to be complied with:
 - Adherence to FDI policy including sectoral caps, pricing guidelines etc.
 - Applicable tax laws

■ ***Holding period in case of unlisted securities reduced***

Capital gains are termed as long-term or short-term based on holding period of capital assets. In the Budget Speech, it was proposed that for shares of unlisted company, period of holding for getting benefit of long term capital regime be reduced to 2 years from current 3 years.

■ ***Concessional rate of tax on LTCG on transfer of shares of private limited company***

Long term capital gains (LTCG) on transfer of unlisted securities are taxable at concessional rate of 10% (as against normal 20%) in the hands of shareholder being non-resident / foreign company. Courts have held that shares of a private company are not securities as per applicable definition since they are not marketable and hence, not eligible for concessional rate.



To address the same, it is being provided that the benefit of concessional rate shall also extend to shares of a company in which the public are not substantially interested (this includes a private company, except a subsidiary of listed company).

■ ***Tax on buy-back of shares***

Tax @ 20% is applicable on distributed income on buy back of shares by an unlisted company. Distributed income means consideration paid by company as reduced by amount received for issue of such shares.



There have been certain ambiguities regarding its applicability (in cases like buy back pursuant to a scheme of arrangement, etc.) and determination of consideration received. It is being clarified that the tax is applicable on all types of buy-back. Further, separate rules would be framed to provide clarity on computing amount received for shares being bought back.

■ ***Additional condition for tax neutral conversion of a company in to an LLP***

As per extant provisions, conversion of a private limited or unlisted public company into an LLP is regarded as tax neutral if certain conditions are fulfilled, including a condition on turnover to be up to INR 6 million in any of preceding 3 years



An additional condition is now being specified. It provides that value of total assets in the books of accounts of the company in any of the three previous years, preceding the previous year in which the conversion takes place, should not exceed INR 50 million. The objective of this amendment appears to exclude large companies out of beneficial provisions

■ ***Individuals / HUFs brought at par with firms / companies in case of demergers / amalgamations***

In case of demerger / amalgamation, where existing shareholder, being an individual or HUF, receives shares from resulting / amalgamated company against original shares held in demerged / amalgamating company and where Fair Market Value (FMV) of shares so received is more than FMV of original shares by INR 50,000 or more, then the difference between the two FMVs is taxable.

However, there is no taxability in case the shareholder is a firm or a company. To bring uniformity, the exemption allowed to firms & companies as shareholders is being extended to individuals & HUFs also.

■ ***Gain on foreign exchange fluctuation on redemption of rupee denominated bonds***

RBI has recently permitted Indian companies to issue rupee denominated bonds outside India to enable them to raise funds from outside India. It is now being provided that in case of redemption of such bonds, capital gains arising to non-resident investors due to appreciation of rupee are not taxable.



■ **Reduction in corporate tax rate**

In last year's budget, corporate tax rate was proposed to be reduced from 30% to 25% over a period, accompanied by rationalization and removal of various tax exemptions and incentives. A roadmap for withdrawal of existing tax exemptions & reduction in incentives has been specified this year.



For domestic manufacturing companies incorporated on or after 1st Mar, 2016, an option is being provided to be taxed at 25% plus surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.

For domestic companies with turnover upto INR 50 million (in the financial year 2014-15), the rate of corporate tax for FY 2015-16 is being reduced from 30% to 29%, plus surcharge and cess.

■ **Deferment of PoEM**

To determine residential status of companies, Place of Effective Management (PoEM) provision was proposed to be introduced from FY 2015-16 onwards by the Finance Act, 2015. However, certain issues emerged like applicability to a company becoming resident for first time, lack of clarity on guidelines, etc.



To address the same, the applicability of PoEM based rule of residency is being deferred by one year – to be applicable from FY 2016-17 onwards. Further, a transition mechanism shall be specified for companies which used to be non-resident prior to such applicability.

■ **Non-Applicability of Minimum Alternate Tax (MAT) on foreign companies prior to FY 2015-16**

Finance Act, 2015 had specified non-applicability of MAT, subject to conditions, on FIIs / FPIs prospectively from FY 2015-16 onwards. This was done in view of past inconsistent judgments and rulings on this matter.

However, due to prospective nature of amendment, there were doubts about applicability of MAT prior to FY 2015-16. The Government had constituted

a Committee on Direct taxes headed by Justice AP Shah on this matter and based on its recommendations, vide a press release dated 24th Sept, 2015, clarified non-applicability with affirmation on amendment to the Act.



The amendment is being made in pursuance of the same. To recap, MAT is not applicable to a foreign company:

- Which is resident of a country with which India has a DTAA and such foreign company does not have a permanent establishment in India; or
- Which is resident of a country with which India does not have a DTAA and such foreign company is not required to be registered under law governing companies in India

■ **Incentive on employment generation**

For all businesses which are liable for tax audit, 30% of additional employees cost incurred is being allowed deduction for 3 consecutive AYs.

'Additional employees cost' means cost incurred on those new employees having total monthly emoluments up to INR 25k, are employed for at least 240 days, participate in recognized provident fund and paid through banking channels.

■ **Equalization Levy**

Equalization levy is being introduced, vide a notification to be issued by the Central Government, in pursuance of Action Plan 1 of OECD's BEPS project. The nature of this levy is not 'a tax on income' and would not be covered by tax treaties. The levy is @ 6% on gross consideration received / receivable for specified services where:



- Such services are provided by a non-resident (not having a PE in India or where such services are not effectively connected to its PE in India) to following assesseees:
 - A resident in India who carries out business or profession; or
 - A non-resident having a Permanent Establishment (PE) in India
- Consideration received / receivable during the year from the assesseees is more than INR 100k; and
- Consideration is paid / payable by the assesseees for carrying out business or profession

'Specified services' is being defined online advertisement, digital advertising and other services as may be notified.

The levy shall be deposited by the payer assesseees, who shall be allowed deduction of such expense only upon deposit of this levy. Further, income arising from providing the specified services on which equalization levy is chargeable would be exempt from income tax.

■ **Taxability of Offshore Funds**

Finance Act, 2015 had brought in a special regime for specifying eligibility requirements by satisfying which, an investment fund located in India would not be deemed to have business connection in India. To rationalize the regime and address industry's concerns, following modifications are being made:



- An investment fund shall be eligible (to avail benefit of this regime) if it is established / incorporated / registered outside India in a notified country / specified territory in this behalf.
- It has been clarified that restriction to not carry on/control & manage any business in India or from India is only with respect to activities in India. Hence, offshore investment funds can now control and manage any business except activities in India.

■ **DDT in case of business trusts**

As per extant provisions, an SPV company pays normal corporate tax on its income and thereafter pays dividend to its holding business trust after DDT. Such dividend received by the business trust and passed on to its investors is exempt in their hands.



However, due to levy of DDT, the business trust structure becomes tax inefficient and adversely impacts rate of return for investor. To address the same, levy of DDT is being dispensed with provided:

- The business trust holds 100% share capital of the SPV or all of such capital required to be held (other than that required to be held by any other entity as per prevalent regulations); and
- DDT would be exempted only for such dividend paid out of current income after the date when business trust acquires the aforesaid shareholding in the SPV. Dividend paid out of accumulated and current profits up to this date shall be subject to DDT.

Dividend so received by business trust and its investors would continue to be exempted in their hands.

■ ***Transfer Pricing – country by country report and master file***

The OECD report on Action 13 of BEPS Action Plan provides for revised standards for transfer pricing documentation. The requisite documents mandated as per the report are:



- Master File: standard information relevant for all multinational enterprise (MNE) group members
- Local File: specifically covers material transactions of the local taxpayer
- Country-by-country Report: certain information relating to global allocation of the MNE's income and taxes, certain indicators of economic activity within the MNE group.

These requirements would apply from AY 2017-18 onwards for those international groups having consolidated revenues exceeding Euro 750 million (~ INR 53.95 billion).

■ ***Withholding tax rate in case where PAN is not available***

As per extant provisions, in case where PAN of assessee is not available, TDS is deducted at higher rates (applicable rate or 20% - whichever is higher) on payments made to such assessee.



To reduce compliance burden for non-resident individual or foreign company, it is being provided that the deduction of TDS at such higher rates would not apply on furnishing of alternative documents, as may be prescribed. This provision is would be applicable from 1st June 2016.

■ ***Dividend for certain assesseees to be taxed @ 10%***

As per extant provisions dividend, on which Dividend Distribution Tax (DDT) is charged, is exempt in the hands of shareholder. Since DDT is applicable @ 15% (excluding surcharges), it creates vertical inequity for those shareholders earning high dividend income since in their case, such dividend would otherwise be taxed @ 30%.

To rationalize the same, it is being provided that in case dividend income of resident individual, HUF or firm is more than INR 1 million, then the dividend in excess of INR 1 million shall be chargeable to tax @ 10% on gross-basis.

Abbreviation	Description	Abbreviation	Description
ARF	Advance Remittance Form	LLP	Limited Liability Partnership
BEPS	Base Erosion and Profit Sharing	MAT	Minimum Alternate Tax
CBDT	Central Board of Direct Taxes	MCA	Ministry of Corporate Affairs
CCI	Competition Commission of India	NGO	Non-Governmental Organizations
CSR	Corporate Social Responsibility	OECD	Organization for Economic Cooperation & Development
DDT	Dividend Distribution Tax	PAN	Permanent Account Number
DTAA	Double Taxation Avoidance Agreement	PE	Private Equity
FAQs	Frequently Asked Questions	PE	Permanent Establishment (in context of tax)
FC-GPR	Foreign Collaboration - General Permission Route	PSU	Public Sector Undertaking
FC-TRS	Foreign Collaboration - Transfer of Shares	RBI	Reserve Bank of India
FDI	Foreign Direct Investment	ROC	Registrar of Companies
FY	Financial Year	SEBI	Securities and Exchange Board of India
HUF	Hindu Undivided Family	SPV	Special Purpose Vehicle
IPR	Intellectual Property Rights	TDS	Tax Deducted at Source
ITR	Income Tax Return	VC	Venture Capitalist



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