

# *Budget 2016-17*

## **Vispi T. Patel & Associates** **Chartered Accountants**

**322, 3<sup>rd</sup> floor, Tulsiani Chambers,  
212, Nariman Point,  
Mumbai – 400 021, India**

**Email ID: [vispitpatel@vispitpatel.com](mailto:vispitpatel@vispitpatel.com)  
Follow us on **

**Contact Nos.: +91 22 2288 1091 / 1092  
+91 9867 635 555**

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**Note: The amendments are generally effective from 1<sup>st</sup> April 2016 (i.e. FY 2016-17 / AY 2017-18), except as provided otherwise**

## INCOME TAX

### *Individuals and HUFs*

<b>Increase in period for acquisition or construction of house property [Section 24]</b>	Deduction of interest payable of two lakhs will be allowed if the acquisition or construction is completed within five years from the end of the financial year in which the capital was borrowed
<b>Allowance for deduction of payment of rent [Section 80GG]</b>	Increase of limit from INR 2000 p.m. to INR 5000 p.m.
<b>Presumptive taxation for income from profession [Sections 44AA, 44AB, 44ADA]</b>	<ul style="list-style-type: none"><li>- Any assessee engaged in profession whose total gross receipts do not exceed fifty lakh rupees in a previous year, estimates his total income at a sum equal to fifty per cent of the total gross receipts, or, as the case may be, a sum higher than the aforesaid sum earned by the assessee</li><li>- Assessee will not be required to maintain books of account under section 44AA</li><li>- Assessee will not be required to get the accounts audited under section 44AB in respect of such income unless the assessee claims that the profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under section 44ADA and his income exceeds the maximum amount which is not chargeable to income-tax</li><li>- Simultaneously, the limit of getting the accounts audited under section 44AB for income from profession has been increased to fifty lakh rupees</li></ul>
<b>VTPA Comment</b>	This will ease the burden of the professionals.
<b>Income from dividend [Sections 10(34), 115BBDA]</b>	Dividend income earned by individual, HUF, or a firm in excess of ten lakhs shall be chargeable to tax at ten percent on gross basis

<p><b>Presumptive taxation for income from business [Section 44AD]</b></p>	<ul style="list-style-type: none"> <li>- Threshold limit of ‘eligible business’ revised from one crore to two crore rupees, subject to certain conditions</li> <li>- Advance tax to be paid only once, i.e. by 15th March of the financial year</li> </ul>
<p><b>VTPA Comment</b></p>	<p>There seems to be a lacuna as the limits under section 44AB for tax audit has not been increased from one crore to two crores, in line with section 44AD</p>
<p><b>Advance tax payment, charging of interest [Section 211, 234C]</b></p>	<ul style="list-style-type: none"> <li>- All assessee’s other than companies have been put at par with the companies with regards payment of advance tax in four installments i.e. 15th June, 15th September, 15th December and 15th March and consequential amendments have been made in levy of interest</li> <li>- The amendment will take effect from 1st day of June, 2016</li> </ul>
<p><b>New Taxation Regime for securitisation trust [Sections 115TA, 115TB, 115TC]</b></p>	<ul style="list-style-type: none"> <li>- The new regime shall apply to securitisation trust being an SPV defined under SEBI (Public Offer and Listing of Securitised Debt Instrument) Regulations, 2008 or SPV as defined in the guidelines on securitisation of standard assets issued by RBI or being setup by a securitisation company or a reconstruction company in accordance with the SARFAESI Act</li> <li>- The income of securitisation trust shall continue to be exempt. However, income from securitisation trust would be taxable in the hands of investors</li> <li>- The income accrued or received from the securitisation trust shall be taxable in the hands of investor in the like manner as that received by the trust</li> <li>- Tax deduction at source shall be effected by the securitisation trust at the rate of 25% in case of payment to resident investors which are individual or HUF and at the rate of 30% in case of others. In case of payments to non-resident investors, the deduction shall be at rates in force</li> <li>- The facility for the investors to obtain low or nil deduction of tax certificate would be available</li> <li>- The trust shall provide breakup regarding nature and proportion of its income to the investors and also to the prescribed income-tax authority</li> <li>- The amendment will take effect from 1st June, 2016</li> </ul>

## Corporates

<b>Taxation of start-ups</b> [Section 54EE, 54GB, 80-IAC]	<ul style="list-style-type: none"><li>- A deduction of one hundred percent of the profits and gains derived by an eligible start-up from an eligible business</li><li>- ‘Eligible start-up’ means a company engaged in eligible business which fulfils the following conditions, namely:—<ul style="list-style-type: none"><li>• incorporated on or after the April 1, 2016 but before the April 1, 2019;</li><li>• total turnover of its business does not exceed twenty-five crore rupees in any of the previous years from April 1, 2016 to March 31, 2021; and</li><li>• it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified</li></ul></li><li>- ‘Eligible business’ means a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property</li><li>- Such deduction shall be available for any three consecutive years out of the five years starting from the year in which it is setup</li> <li>- Exemption of long term capital gain proceeds, up to INR 50 lakh, invested by an assessee in units of such specified fund, as may be notified by the Central Government, subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn</li> <li>- Long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies to be an eligible start-up subject to the condition that the individual or HUF holds more than fifty percent shares of the company and such company utilises the amount invested in shares to purchase new asset</li></ul>
<b>Implementation of POEM</b> [Section 6(3)]	The applicability of POEM based residence test is deferred by one year and is effective from AY 2017-18

<b>Taxation of income from ‘Patents’ [Section 115BBF]</b>	<p>Any income of a person resident in India, by way of royalty in respect of a patent developed and registered in India, shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on gross basis</p>
<b>VTPA Comment</b>	<p>This is a concessional tax regime for the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970.</p>
<b>Phasing out of deductions and exemptions [Sections 10AA, 35 35AC, 35AD, 35CCC, 35CCD, 80IA, 80IAB, 80IB]</b>	<ul style="list-style-type: none"> <li>- In case of tax incentives with no terminal date, a sunset date of 31.03.2017 will be provided either for commencement of the activity or for claim of benefit depending upon the structure of the relevant provisions of the Act</li> <li>- There will be no weighted deduction with effect from 01.04.2017</li> </ul>
<b>Dividend Distribution Tax on income distributed by SPV to business trust [Sections 10(23FD), 115-O, 115UA, 115LBA]</b>	<p><b>Tax implications in the hands of SPV</b></p> <ul style="list-style-type: none"> <li>- Exemption from levy of DDT in respect of distributions made by SPV to the business trust, subject to certain conditions</li> </ul> <p><b>Tax implications in the hands of business trust / investment trust</b></p> <ul style="list-style-type: none"> <li>- Dividend received by the business trust and its investor shall not be taxable in the hands of trust or investors</li> </ul>
<b>Amortisation of spectrum fee for purchase of spectrum [Section 35ABA]</b>	<ul style="list-style-type: none"> <li>- New section 35ABA in the Act is proposed to be inserted to provide for tax treatment of spectrum fee and deduction of any capital expenditure incurred will be allowed in equal instalments over the period for which the right to use spectrum remains in force</li> <li>- Specified provisions have been proposed for transfer, etc. of such spectrum license</li> </ul>

## *Non Residents*

<b>Modification in conditions of special taxation regime for off shore funds [Section 9A]</b>	<ul style="list-style-type: none"><li>- It is proposed to modify the conditions to provide that the eligible investment fund for purposes of section 9A, shall also mean a fund established or incorporated or registered outside India in a country or a specified territory notified by the Central Government</li><li>- The condition of fund not controlling and managing any business in India or from India shall be restricted only in the context of activities in India</li></ul>
<b>Exemption from furnishing PAN [Section 206AA]</b>	<ul style="list-style-type: none"><li>- The rigor of higher tax deduction at source for non-furnishing of PAN has been done away for non-residents, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.</li><li>- This amendment will take effect from 1st June, 2016</li></ul>
<b>VTPA Comment</b>	Jurisprudence has held that the provisions of the DTAA would prevail over section 206AA and this amendment is in line with such jurisprudence
<b>Minimum Alternate Tax for foreign companies</b>	<p>In line with the promise held out by the parliament, levy of MAT on foreign companies, subject to certain conditions, has been abolished</p> <p>This amendment is proposed to be made effective retrospectively from assessment year 2001-02</p>
<b>Definition of the term 'unlisted securities' [Section 112(1)(c)]</b>	In the case of non-residents, long-term capital gains arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10 per cent

**Maintenance and keeping of information and document [Section 92D, 271AA, 271GB, 273B, 286]**

In line with the Base Erosion and Profit Shifting (BEPS) report of the Organization for Economic Cooperation and Development (OECD) along with the G20 countries, India has taken an important step in implementing Action 13.

Action 13 provides for revised standards for transfer pricing documentation and a template for country-by-country (CbC) / master file reporting of income, earnings, taxes paid and certain measure of economic activity.

Action 13 recommends a three-tiered structure for maintenance of documentation consisting of:-

- i. a master file containing standardised information relevant for all multinational enterprises (MNE) group members;
- ii. a local file referring specifically to material transactions of the local taxpayer; and
- iii. a country-by-country report containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group

The prescribed proposed elements relating to CbC reporting requirement and matters related to it are:

- a. the reporting provision shall apply in respect of an international group having consolidated revenue above a threshold which will be prescribed
- b. the parent entity of an international group (if it is resident in India) shall be required to furnish the report in respect of the group to the prescribed authority on or before the due date of furnishing of return of income for the Assessment Year relevant to the Financial Year (previous year) for which the report is being furnished
- c. every constituent entity in India, of an international group having parent entity that is not resident in India, shall provide information regarding the country or territory of residence of the parent of the international group to which it belongs. This information shall be furnished to the prescribed authority on or before the prescribed date



	<p>d. the report shall be furnished in prescribed manner and in the prescribed form and would contain aggregate information in respect of revenue, profit and loss before income-tax, amount of income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's residential status, nature and detail of main business activity and any other information as may be prescribed.</p> <p>e. If there are more than one entities of the same group in India, then the group can nominate (under intimation in writing to the prescribed authority) the entity that shall furnish the report on behalf of the group</p> <p>f. For non-furnishing of the report, inaccurate information by an entity which is obligated to furnish it, penalty provisions would apply</p> <p>It is clarified that only essential elements will be included in the Act while remaining aspects will be detailed in the Income-tax Rules, 1962 (the Rules).</p>
<b>VTPA Comment</b>	<p>This reporting may not only create more transparent information to be provided by multinational enterprises to the tax authorities, but will also entail more onerous compliance and documentation requirements on such enterprises</p>

<b>Extension of time limit to Transfer Pricing Officer in certain cases [Section 92CA(3A)]</b>	<ul style="list-style-type: none"> <li>- Where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority, the time available to the Transfer Pricing Officer for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than sixty days, then such remaining period shall be extended to sixty days.</li> <li>- The amendment will take effect from 1st day of June, 2016</li> </ul>
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<b>Filing of appeal by AO against DRP order [Section 253]</b>	<ul style="list-style-type: none"> <li>- In line with the decision of the Government to minimise litigation, filing of appeal by the Assessing Officer against the order of the DRP is done away with</li> <li>- The amendment will take effect from 1st day of June, 2016</li> </ul>
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## *Other Amendments*

### **Introduction of the Direct Tax Dispute Resolution Scheme, 2016**

<b>Direct Tax Dispute Resolution Scheme</b> <b>(Clauses 197 – 208 of the Finance Act w.e.f. June 1, 2016)</b>	<ul style="list-style-type: none"><li>- This amendment is applicable for appeals pending before the Commissioner (Appeals) for both income-tax and wealth tax as on February 29, 2016, i.e., ‘tax arrears – tax, interest, penalty’</li><li>- The declarant under the scheme is required to pay tax plus interest upto the date of assessment/ reassessment and twenty five per cent of the minimum penalty in case of disputed tax exceeding rupees ten lakh</li><li>- In case of pending appeal against a penalty order, twenty-five percent of minimum penalty leviable shall be payable (alongwith the tax and interest payable on total income determined)</li><li>- Further, the pending appeal shall be deemed to be withdrawn</li> <li>- This amendment is also applicable to any dispute regarding any tax determined due to any retrospective amendment as on February 29, 2016, i.e. ‘specified tax’, and appeal is pending before any appellate authority or writ petition pending before any court or any arbitration, conciliation or mediation proceedings pending</li><li>- In case of ‘specified tax’, such amount of tax shall be payable</li><li>- Further, the declarant shall withdraw all such appeals and proceedings</li></ul> <p>The scheme is not applicable in certain prescribed circumstances, e.g. in case of search or survey cases, etc. This scheme provides immunity to the declarant from any penalty or prosecution proceedings under the Act and in case of ‘specified tax, waiver of interest, as well.</p>
<b>VTPA Comment</b>	These provisions may help to reduce litigation especially in cases of retrospective amendments, where there would be a waiver of interest, penalty and prosecution. There is a similarity of this scheme with the Kar Vivad Samadhan Scheme, 1998.

## Introduction of the Income Declaration Scheme, 2016

<b>Voluntary Income Declaration Scheme (Clauses 178 – 196 of the Finance Act w.e.f. June 1, 2016)</b>	<ul style="list-style-type: none"><li>- There is a proposal to provide an opportunity to taxpayers to come forward and declare their undisclosed income, by paying income-tax, surcharge and penalty totaling to forty five per cent of such income</li><li>- It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It is also proposed that no scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations under such Acts be provided</li></ul>
<b>VTPA Comment</b>	<p>The scheme is similar to the Voluntary Disclosure Income Scheme, 1997. However, on a PIL filed before the Supreme Court, the then Government reportedly came up with an affidavit in the Hon'ble Supreme Court stating <i>inter-alia</i> that the 1997 VDIS scheme would be the last such occasion and the Government would not bring about any such scheme in future. Thus, whether the scheme shall stand the test of law is to be seen.</p>
<b>Rationalisation of provisions</b>	<p>The TDS, penalty, assessment, reassessment, etc. provisions have been simplified and rationalized.</p>

## Equalisation Levy on digital e-commerce

<b>Equalisation Levy [Clauses 160 to 177 of Finance Act]</b>	<p>In line with the Action 1 of the BEPS report, it is proposed to insert a new Chapter titled 'Equalisation Levy' in the Finance Bill</p> <ul style="list-style-type: none"><li>- An equalisation levy of 6% of the amount of consideration, for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, is payable by:<ul style="list-style-type: none"><li>• a resident in India who carries out business or profession, or</li><li>• from a non-resident having permanent establishment in India,</li></ul></li><li>- 'Specified service' means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government</li><li>- No such levy shall be made if the aggregate amount of consideration for specified services does not exceed one lakh rupees in any previous year</li><li>- Any income arising from providing specified services on which equalisation levy is chargeable, shall be exempt from income-tax</li><li>- Expenses incurred by the assessee towards specified services shall not be allowed as deduction in case of failure of the assessee to deduct and deposit the equalisation levy to the credit of Central government</li></ul> <p>This Chapter will take effect from the date appointed in the notification to be issued by the Central Government.</p>
<b>VTPA Comment</b>	<p>This is a new type of tax levied on digital commerce and may be the start of international tax competition amongst the comity of nations.</p>

## ***Rates of tax***

### **1.1. For Individuals, Hindu Undivided Families, Association of Persons and Body of Individuals.**

<b>Existing</b>		<b>Proposed</b>	
<b>Income (INR)</b>	<b>Rate (%)<sup>@</sup></b>	<b>Income (INR)</b>	<b>Rate (%)<sup>@</sup></b>
0 – 2,50,000 <sup>#</sup>	Nil	0 – 2,50,000 <sup>#</sup>	Nil
2,50,001 - 5,00,000	10	2,50,001 - 5,00,000	10
5,00,001 - 10,00,000	20	5,00,001 - 10,00,000	20
10,00,001 and above	30	10,00,001 and above	30

**@ Education cess of 3% is leviable on the amount of income-tax.**

**# The basic exemption limit is INR 250,000 in case of every individual below the age of 60 years, INR 300,000 in case of resident individuals of the age of 60 years or more and INR 500,000 for ‘Very Senior Citizen’ in case of resident individuals of age 80 years and above.**

**\* An Assessee, whose total income does not exceed INR 500,000, shall be entitled to a credit on the Income-tax payable, of an amount equal to hundred percent of the Income-tax payable or INR 5,000, whichever is less.**

**\* An assessee having taxable income of more than INR 10 million is liable to pay his tax along with 15% surcharge, provided the surcharge does not exceed the amount equivalent to the income over INR 10 million.**

## 1.2. For Others

Description	Existing Rate (%)		Proposed Rate (%)	
	Having Income from INR 10 million to 100 million	Having Income more than INR 100 million	Having Income from INR 10 million to 100 million	Having Income more than INR 100 million
<b>A) Domestic company</b>				
Regular tax (Turnover < 50 mn)	33.063	34.608	31.9609*	33.4544**
Regular tax (Turnover > 50 mn)	33.063	34.608	33.063*	34.608**
MAT	20.389 (of book profits)	21.34 (of book profits)	20.389 (of book profits)*	21.34 (of book profits)**
DDT	17.304	17.304	17.304**	17.304**
Dividend Received from Foreign subsidiary company	17.304	17.304	17.304**	17.304**
<b>B) Foreign company</b>				
Regular tax	42.024	43.26	42.024 <sup>s</sup>	43.26 #
<b>C) Firm and LLP</b>				
Regular tax	34.608		34.608**	
Alternate Minimum Tax (AMT)	20.389		20.389**	

**\*\*Inclusive of surcharge @ of 12 % and education cess of 3 %**

**\* Inclusive of surcharge @ of 7 % and education cess of 3 %**

**s Inclusive of surcharge @ of 2 % and education cess of 3 %**

**# Inclusive of surcharge @ of 5 % and education cess of 3 %**

## GLOSSARY OF TERMS

<b>Abbreviation</b>	<b>Meaning</b>
<b>AO</b>	<b>Assessing Officer</b>
<b>AY</b>	<b>Assessment Year</b>
<b>CBDT</b>	<b>Central Board of Direct Taxes</b>
<b>DDT</b>	<b>Dividend Distribution Tax</b>
<b>DRP</b>	<b>Dispute Resolution Panel</b>
<b>DTAA</b>	<b>Double Tax Avoidance Agreements</b>
<b>FY</b>	<b>Financial Year</b>
<b>HUF</b>	<b>Hindu Undivided Family</b>
<b>ITA / Act</b>	<b>Income-tax Act, 1961 as amended from time-to-time</b>
<b>LLP</b>	<b>Limited Liability Partnership</b>
<b>MAT</b>	<b>Minimum Alternate Tax</b>
<b>PAN</b>	<b>Permanent Account Number</b>
<b>POEM</b>	<b>Place of Effective Management</b>
<b>RBI</b>	<b>Reserve Bank of India</b>
<b>SEBI</b>	<b>Securities and Exchange Board of India</b>
<b>SPV</b>	<b>Special Purpose Vehicle</b>

### Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.