CFI

PRE – BUDGET MEMORANDUM 2015-16

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CONSTRUCTION FEDERATION OF INDIA

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I. DIRECT TAX – INCOME TAX:

Sr. No.	Current Provision	Suggestion
a	**Corporate Dividend Distribution Tax**	
	Presently Corporate Dividend Distribution Tax is applicable at the rate of 15% plus surcharge at 10% and cess of 3%, effective rate being 16.995% on the amount of dividend distributed. As per the Finance Act (No. 2) 2014, with effect from 1st October 2014, DDT shall be applied as if the amount of dividend distributed is after deduction of dividend distribution tax. This makes the effective rate on the amount of dividend distribution at 20.475%.	It is suggested that the earlier rate of tax, which is already on higher side may be retained, considering the additional outflow to Companies. This amendment amounts to backdoor increase in rate of DDT.
b	**Disallowance of Expenditure incurred by a Company on activities involving Corporate Social Responsibility (CSR)**	
	Hitherto expenses on Corporate Social Responsibility (CSR) were being claimed as allowable business expenditure under Section 37 (1) of the Income Tax. Now with effect from AY 2015-16, CSR expenditure incurred by a Company will specifically be treated as for non-business purposes hence will be disallowed other than those which are covered u/s 30 to 36 of the Act.	Under the Company's Act it is now a mandatory requirement for a Company to incur expenditure on CSR at specified percentage of profit or turnover. The disallowance will result in an additional cost that too towards complying with Statutory requirement under Company's act. Further deductions under the heads of Section 30 to 36 are limited to Salaries, repairs, depreciation etc as against the deduction available under Section 37 (1). Therefore it is suggested that the earlier provisions be retained.

Sr. No.	Current Provision	Suggestion
c	**Amendment in Section 80 IA (4) – Conditions for claiming deduction**	
	Section 80IA(4) of the Income Tax, 1961 lays down certain conditions to be fulfilled in order to claim deduction under this Section. One of the condition is that an enterprise carrying on the business of developing has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing a new infrastructure facility. Moreover explanation to Sec. 80IA(13) clarifies that the deduction available u/s 80IA(4) will not be available to the undertaking or enterprise if same is in the nature of Works Contract.	The benefits under section 80-IA was meant for and applicable to only domestic enterprises so as to encourage them undertake infrastructure development works and accordingly the benefit of deduction is envisaged for developer of infrastructure facilities. As the company who undertake construction work (on EPC basis) of infrastructure facility has to take various types of risks and make substantial investment, contractor are also regarded as developer and the same has been accepted by various appellate forums. Retrospective modification of this section shall also adversely impact the net worth of Infrastructure companies, their credit ratings and ability to borrow; resulting in increased cost and / or slowdown of infrastructure development as a whole. Accordingly, it is suggested that in case contract awarded to the enterprise where risk, finance etc. of the project is taken by the said enterprise, the restriction about works Contract should not be considered As the companies who win the bid for the project have to compulsorily form a separate company i.e., SPV to comply with the conditions of Tender Document, it is suggested that the word “enterprise” be suitably and clearly defined under Section 80IA to include companies who win the bid for the infrastructure project as well as SPVs formed to implement the project.

Sr. No.	Current Provision	Suggestion
d	**Applicability of Alternate Minimum Tax (AMT) on all persons including Association of Person (AOP)**	
	Hitherto AMT was payable only by Corporate Assessees and LLP's. Subsequently, AMT made applicable to all assesses other than a company (including joint ventures/AOP) w.e.f 01.04.2013. Joint venture/AOP is generally formed for a specific project having a duration ranging from 5-10 years. Introduction of AMT would only increase the cost burden as JV have to pay taxes in spite of being eligible for profit linked deductions. Further the AMT credit would also lapse in view of shorter duration of the projects. Moreover, after introduction of AMT, new entrants will be reluctant to enter into new infrastructure projects through the JV route.	The provision relating to introduction of AMT on all persons including JV/AOP would increase the cost of the infrastructure projects and therefore same may please be reconsidered.

Sr. No.	Current Provision	Suggestion
e	**Amendment required in provisions relating to Minimum Alternate Tax (MAT) Section 115 JB of the Act**	
	i) Definition of book profits to be amended so as to exclude member's share in income (include loss) of AOP The member's share in the income of the AOP is taxed separately in the hands of AOP joint venture. Such income when credited to the profit and loss account in the books of corporate member, it is subjected to tax again under section 115JB of the Act. This amounts to taxing the same income twice.	It is suggested that definition of book profits under section 115JB be amended to exclude the member's share in income (including loss) of association of persons. This is now imperative in view of introduction of AMP Provisions in case of AOP.
	ii) Section 115JB to exclude Section 90 of the Income Tax Act. Section 115JB has overriding effect above all other provisions of the Act including Sec 90(2) of Income Tax Act. Section 90(2) provides that in the case of Agreement with any country outside India, the provisions of this act shall apply to the extent they are more beneficial to the assessee. However, there are certain provisions in the Act for example – 115JB, which starts with a non-obstante clause, thus overriding Section 90(2) of the Act. As a result, same does not allow the assessee to take recourse to the treaty provisions even if it is more beneficial to the assessee. Whereas it is a well settled position that in case of conflict between the Act and treaty provisions, the later would prevail over the Act.	An amendment to be brought in section 115JB by virtue of which this section excludes section 90 of the Income Tax Act., so that the benefit of Section-90 is available to the assessee

Sr. No.	Current Provision	Suggestion
f	**Clarification on Taxation of AOP's (Integrated Joint Ventures)**	
	It is general practice in the construction sector to enter into joint ventures with other body corporate or overseas companies. These joint ventures are profit / (loss) sharing arrangement, in which profit / (loss) though assessed in the hands of the AOP joint venture, tax is computed at a rate applicable to individual member of the joint venture on his portion of income from joint venture. Share of profit of the member in such AOP is included in its total income under section 61 of the Act, though no tax is payable again by the member on such income as tax is already paid by the joint venture AOP. Similarly, share of loss of the member in such AOP will be included in the total income of the member and such loss is eligible to be set off under section 70 of the Act, against other business income of the member. However, the field formation, is denying this eligible set off to most of the construction companies which devoid of basic principles of taxation of AOP's post 1989.	It is suggested that suitable amendment may be made so as not to disallow the assessed loss in view of the express provisions of law. This will go a long way in resolving unnecessary disputes in this regard and will save time and cost of both revenue authorities and tax payers.
g	**Need to introduce carry backward of business losses**	
	Presently, unabsorbed business losses are allowed to be carried forward and set off against future business income. However, what is immediately expedient to a loss making business is to grant financial assistance in all respect. Carry backward of losses say upto three financial years will result in tax refunds to business for taxes paid earlier. Such financial assistance by the government in the difficult business cycle will help in revival of such business and business will be able to contribute to the exchequer again.	The provision of carry backward of losses is prevalent in most of the Western countries and is working effectively. It is suggested that similar provisions be introduced in the Indian Income Tax Act too.

Sr. No.	Current Provision	Suggestion
h	**Disallowance under Section 14A of the Act –Investment by Holding Co in its subsidiaries considered for computing disallowance – Rule 8D.**	
	• Multi Tier corporate structure generally adopted for infrastructure development sector. • Major projects to be undertaken by SPVs – a requirement of contract awarding agencies (e.g. NHAI) • SPVs engaged in infrastructure sector generally have long gestation period • No income is earned by Holding Co from SPVs during gestation period. • Disallowance under Section 14A of the Act made even though no exempt income is earned by the Holding Co from investment in SPVs.	Investment by Holding Co in group companies / subsidiaries through which it executes projects should be excluded while computing average investments' – Rule 8D. Alternatively, disallowance may be made only against investments which have actually earned exempt income during relevant year & wherein nexus is established towards borrowed funds. In any case disallowance cannot be more than exempt income earned during relevant year.
i	**Applicability of Transfer Pricing provisions to domestic transactions between related resident parties (From AY 2013-2014)**	
	The scope of Transfer pricing regulations is expanded to include "Specified Domestic transactions" as outlined below if the aggregate value of such transactions exceeds INR 5 crores during the year : 1) Expenses or payments made to domestic related persons as specified in Section 40 A (2) (b) Scope of Section 40 A (2) (b) has been expanded to include companies having a common parent company Transactions between undertakings of the same taxpayer or transactions by a taxpayer with closely connected persons for the purpose of Chapter VIA (deductions in respect of certain tax holidays) and section 10AA of the Act (Tax holiday for SEZ units). Further, in the case of BOOT/JV model, it is one of the tender condition that the company or consortium of company who wins the	The existing section 40A(2)(b) already had the provision for disallowance of any excessive or unreasonable expenditure in respect of payments made to related persons. Therefore it is felt the said amendment is not necessary. Without prejudice to the above clarity is required as to whether the said provision will apply to; a) Transactions on revenue account or capital account also as provision refers to 'expenses or payments'. b) Expenditure/payments directly by such related undertakings or also indirectly or step down related parties. c) Further there are different reporting requirements as well as definition of 'related parties' under Company's Act/ SEBI making it difficult to comply.

	award has to form a separate company, i.e. special purpose vehicle (SPV) or a JV,who eventually subcontract the work to its members/sponsors. Accordingly, it will become a herculean task to prove that the transaction between the SPV and its sponsors are at arm's length.	It is further suggested that JV's/SPV"s may please be excluded from the Transfer pricing provision applicable in the case of specified domestic transactions.

II INDIRECT TAX:

A. SERVICE TAX:

Sr. No.	Issue	Justification
1.	**Imposition of severe slab of interest for delay in payment of Service Tax**	
	In the Finance Act, (No. 2), 2014-15, interest on delayed payment of taxes / duties has been imposed as under: – 18% p.a for delay upto 6 months – 24% p.a for delay beyond 6 months and upto 1 year – 30% p.a for delay beyond 1 year.	The rate of interest is very exorbitant and will have far reaching impact on the litigated / disputed amounts. Even genuine errors and misinterpretation of tax provisions would attract these exorbitant interests posing serious financial burden on the assessee. The industry requests that the earlier rate of 18% , which itself is on the higher side, be retained
2.	**Amendment to Rule 4(1) and Rule 4(7) of CCR, 2004 (Restriction of time limit of 6 months from the date of invoice / bill / Challan for availing Cenvat Credit):**	
	In the Finance Act, (No. 2), 2014-15 a time limit of 6 months has been fixed from the date of invoice / bill / Challan for availing Cenvat credit for input and input services.	This restriction is very detrimental to a Manufacturer/Service provider. In several instances, due to disputes, invoices are not finalized / accepted within this time limit. Since the Manufacturer / Service provider has purchased inputs / availed input services on payment of tax, he should be allowed to avail Cenvat Credit as per business strategy. By not taking the credit on time, it is the manufacturer / service provider who is deferring availment of Cenvat credit and the Government should not have any objection when Cenvat Credit is availed late. Suggested that the earlier provisions be retained.

Sr. No.	Issue	Justification
3	**Mandatory pre-deposit in Appeal Procedure (Amendment to Section 35F of C.E. Act, 1962):**	
	New procedure has been introduced for appellate proceedings before the Commissioner (Appeals) and Appellate Tribunal. The Appellant is required to make a pre-deposit for filing appeal ranging from 7.5% to 10% as applicable.	With this new procedure, assessee will be required to compulsorily deposit the pre-deposit amount in order to lodge appeals. The payment of 10% for filing appeal at the 2nd stage is very high. In effect if second appeal is also required to be filed, the total pre-deposit would be 17.5%. The provision would be further detrimental if frivolous demands are raised by the tax authorities for meeting targeted revenue. Considering the adverse impact on service industry, it is requested that the requirement of pre-deposit be dispensed with. For any reason if pre-deposit is inevitable it should be reduced to 2% or an amount of Rs.2 crores whichever is lesser.
4.	**Restriction on availment of Cenvat credit - Payment under Reverse Charge mechanism.**	
	As per new provision in the Finance Act, (No. 2), 2014-15, with effect from 1st October 2014, in case of reverse charge, the point of taxation will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. Due to this amendment, the liability under RCM would get triggered on the earlier of, the date of payment of the invoice by the service recipient or the 91st day from the date of the invoice.	All along, industry had requested to link liability under RCM with payment of the value of the input service to the service provider, however, such plea went unnoticed. Rather regressively, the liability would get triggered early since service recipients would have even shorter time of 3 months than the previously allowed time limit of 6 months.

Sr. No.	Issue	Justification
	Further, in case of partial reverse charge, credit would be available only after the payment of the value of the input service and service tax thereon. So if the said payment is made after six months from the date of tax invoice by the service provider, then the right to avail the CENVAT credit is denied before it is accrued to the assessee.	Due to genuine reasons, the payment may not be made to the Vendor. Now due to the stringent provision, the Service recipient may have to forego the Cenvat credit. Suggestions: a) For liability part – It is requested that liability under RCM should be triggered only consequent to payment of the invoice value to the service provider. b) For availment of Cenvat credit - If at all, availment of credit may be linked with payment of the Service Tax liability under Reverse Charge mechanism, credit of such tax paid may be availed on the basis of service tax challan vide which payment has been so made. Accordingly, similar to payment of service tax liability under full reverse charge mechanism, credit should be available immediately on payment of service tax.
4.	**To notify Rule 5 as Place of Provision of Service for Projects in J & K, irrespective of location of Service Provider & Service Receiver :**	
	Rule 5 of POP Rules, 2012: Location of Immovable Property – In case of services that is directly in relation to immovable property, the place of provision is where the immovable property (land or building) is located, (irrespective of where the provider or receiver is located (Page 61 Ed. Guide).	As Service Tax is consumption based, in terms of Rule 14, there could be interpretation by field formation that Rule 8 will prevail over Rule 5 and hence all input services would attract service tax which is not the spirit of the law when services are provided to Immovable property located in J & K which is excluded from taxable territory.

Sr. No.	Issue	Justification
	Rule 8 of POP Rules, 2012: Place of provision of a service, where the location of the provider of the service as well as that of recipient of service is in the Taxable territory, shall be the location of the recipient of Service. However, for a project awarded in J&K, Rule 14 of POP Rules, 2012, states that notwithstanding anything stated in any rule, where the provision of a service is prima facie determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. Therefore for a project located in Jammu & Kashmir (which is excluded from the Taxable territory) , when a service is provided for such project where both the Service provider and service receiver are located in taxable territory, there is an ambiguity that by virtue of Rule 8 read with Rule 14, such service could be taxable.	By virtue of Rule 13, we request to notify Rule 5 as Place of Provision of Service for Projects in J&K irrespective of location of provider and receiver of services. Para 5.5 of Education guide clearly states that "in the case of a service that is directly in relation to immovable property, the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located".
5	**Clarification to Sr. No 29 (sub clause- h) of Mega Exemption Not. No. 25/2012-ST:**	
	Sr. No. 29 (sub clause-"h") exempts Sub-contractors providing services by way of Works contract to another contractor providing Works Contract Services for exempt services.	There is ambiguity whether the Mega Exemption is available when pure services (only labour portion of a Works Contract) is provided by the sub-contractor to the Principal contractor. This clarification is very much required in relation to pure services provided in respect of services mentioned at Sr. No.12, 13 & 14 of the Mega Exemption Notification vide Notification No.25/2012-ST dated 20.6.2012.

Sr. No.	Issue	Justification
6.	**Exemption for Site Formation and clearance, excavation and earth moving and demolition:**	
	Site formation and clearance, excavation and earth moving and demolition are important and primary activities in the execution of various infrastructure projects. Services provided to projects mentioned at Sr. No. 12, 13 & 14 of Exemption Notification No. 25/2012-ST dated 20.06.2012 are exempt from service tax but the primary activities like site formation and clearance, excavation and earth moving and demolition etc. which form substantial part of the project work for these exempt projects are not specifically exempted.	It is requested that exemption to Site formation and clearance, excavation and earth moving and demolition etc. is also extended in respect of projects exempted at Sr. No. 12, 13 & 14 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.
7.	**Unutilized credits due to partial reverse charge mechanism (AOPs / Joint ventures)**	
(i)	As per Sr. No.1(v) of Not. No. 30/2012-St dated 20.6.2012, an unincorporated JV, being an AOP, for specified services, would be liable to pay only 50 % of its service tax liability, while the remaining 50 % has to be paid by the service recipient. However, JV could avail 100% Cenvat Credit on input services including services provided by sub-contracts. Hence, there will be huge accumulation of cenvat credit in the hands of the JV. Since JVs are formed for a specific project, utilizing the credit for any other purpose is also ruled out. In this connection, Notification No. 12/2014-Central Excise (N.T.) has been issued prescribing the guidelines for claiming refund of such unutilized Cenvat	*It is suggested that in case of AOPs and JVs, a blanket exemption from Service Tax on reverse charge mechanism is provided effective ab initio, to do away with the problem of accumulated Cenvat Credit* and subsequent refund of the same to do away with all the procedural hassles and blockage of cash in an already-starving construction industry. In a nut-shell, reverse charge is not applicable if service is provided by a Company. Similar to the said exclusion, necessary provision may please be introduced for exclusion of AOP (which is a JV between Companies) as well for the purpose of non-applicability of Reverse Charge Mechanism so that Service Tax in full is deposited by AOP as a service

	Credit. Contractor providing Works Contract Services for exempt services.	provider under normal provisions.
ii)	Presently, Reverse Charge has been specified for following categories to be paid by Service Recipient at following percentage: Manpower Services - 75% Works Contract Services - 50% Security Services - 75% Renting or hiring of Motor Car - 40% /50% Legal Services - 100%	It is suggested that there be a uniform rate of service tax under reverse charge mechanism (preferably 50% under which the service tax liability for the service provider as well as service receiver will be same) for all the services covered under partial reverse charge mechanism. This will reduce confusion among service provider and service receiver about the service tax liability to be discharged by each of them. This will also make administration with respect to returns easier.
8.	**Clarification regarding non applicability of service tax on Annuity, Grant, user fees etc**	
	As per Sr. No. (h) of Negative List of Services, the following service is exempt: "Service by way of access to a road or a bridge on payment of toll charges" In terms of Circular No.152/3/2012-ST-F. No. 354/27 /2012-TRU dated 22nd February, 2012, Service tax is not leviable on toll paid by the users of roads. Consideration other than toll (such as Annuity, grant, user fees etc.) may be received by Concessionaire for management of roads from NHAI/ users. In the absence of clarification, there may be disputes on applicability of Service tax on such consideration.	It is suggested that negative list should be suitably amended to provide that any consideration, such as Annuity, grant, user fee etc., by whatever name called, whether or not in the name of toll, received by Concessionaire for access to road, construction, management, repair, maintenance, etc. should be exempt from Service tax.

B. <u>Central Excise:</u>

	Issue	Justification
1.	**Amendment to Sr. No. 233 of Notification No. 12/2012-C.E. dated 17.03.2012. for Water Treatment Plant**	
	Water Supply project consists of the following: 1. Water pumping station at the source of water. 2. Water treatment plant. 3. Water storage facility 4. Pipeline for delivery of water	Excise duty exemption presently available only for water treatment plant may be extended to all stages/units of water supply project since all stages are part of a complete water supply project. It may be noted that "Water supply projects" are exempted from payment of Service Tax
2.	**<u>Proposal for duty exemption notification:</u>** **Duty Exemption to goods supplied for setting up of Sewerage Projects**	
	Sewerage Projects being of national importance are on Government's high priority due to Public Health & Pollution in the country. There is no specific notification providing exemption to goods used for setting up of Sewerage Projects.	It is suggested that being a Sewerage Project, all excisable goods to be supplied for setting up of a Sewerage project including manufacturing of Pre-Cast RCC Pipes, Pre – Cast RCC Manhole Slab & other materials to be supplied for civil construction need to be exempted from payment of excise duty by way of a notification to so that the project becomes viable and cost effective.
3	**New Provision as per Budget 2014-15 - Mandatory Fixed Pre deposit**	
	Where only penalty is charged without any excise duty.	Where no excise duty is payable but only penalty has been charged pre-deposit should not be applicable.
4	**Amendment to Sr. No.206 of Notification No. 12/2012-C.E. dated 17.03.2012 – To prescribe procedure for removal of fabricated goods from site for galvanization and returned to site within specified period**	

	Goods fabricated at site of work for use in construction work at such site are exempt from excise duty vide Sr. No.206 of Not. No.12/2012-C.E. Due to gradual change in technology, some of the fabricated structures need specialized testing, galvanizing and other technical treatments before erection of the fabricated structure at site	In the absence of any clear procedure in the exemption notification for removal of such fabricated goods from the site and receive back after specialized testing, galvanizing a nd other technical treatments, it is suggested that Excise Rule may be suitably amended to enable Contractor to remove the fabricated goods and receive back as such within a specified period after testing, galvanizing etc.

C. CUSTOMS DUTY:

Sr. No.	Issue	Justification
1.	**Clarification required on Custom Circular No. 49/2011 dated 4th November, 2011 issued under F.No. 528/14/2008-Cus (TU):**	
	Condition No. 4 of Circular No. 49/2011 dated 4.11.2011 issued by the CBE&C clarifies that construction equipments imported under CTH 98.01 under Project Import may be permitted to be transferred to other registered project under CTH 98.01 after completion of its intended use, on recommendations of sponsoring authority. However, in the case of Toyo Engg. India Ltd. vs. CC, Mumbai referred in the circular, the Apex Court has made it clear that "mere possibility of its being used subsequently for other project would not debar the respondent from availing facility of project imports" which means the equipment can be transferred to any project not necessarily registered under Project Import. In condition No.5 of the said circular it is also clarified that Plant Site verification Certificate is required to be submitted for finalization of project as per circular Nol.14/2006-Cus. F. No.528/9/w006-Cus. (TU) shall also incorporate the details of construction equipments imported and used for the project to ensure proper utilization of goods imported This certificate is required in the case of embedded equipments which will remain at project site permanently.	As of date Construction Industry is not clear on the circular. They are in a dilemma whether to consider duty exemption accrued to be passed on to the project authority or not. If Industry gets clear picture on this, all the benefit accrued may be passed on to the project authority and cost of the projects initiated by the Government may drastically come down. We suggest that since the contractor is allowed to import and use the auxiliary equipment for a particular project, the Contractor may be allowed to withdraw the equipment from the site on production of project completion certificate from the Project Authority and the contractor should be free to utilize such equipment in any other projects. If above suggestion is not acceptable, the contractor may be allowed to pay customs duty on the depreciated value of the goods to be calculated @5% on straight line method for each completed quarter starting from the date of importation of the goods till the date of withdrawal from the project. Construction equipment will have to be withdrawn from site after completion of its use and hence suggest that instead of Plant Site Verification Certificate, contractor may be allowed to provide a certificate from the project authority.

Sr. No.	Issue	Justification
2.	**Withdrawal of Countervailing Duty exemption and Special Additional Duty exemption on import of Tunnel Boring Machine (TBM):**	
	TBM is costly equipment and cost has further increased due to levy of Countervailing Duty exemption Special Additional Duty, which works out @ 16.854% which has direct impact on the cost of the national priority projects as the cost of the TBM is part of the project.	TBM is more of project specific equipment and chances of reuse in another project are practically very low. At present we do not find any established manufacturers of TBM in India. Request that the exemption of countervailing duty and special additional duty withdrawn on TBM may be restored and such exemption in total duty on import of parts and components by any importer instead of allowing the exemption only for assembly of TBM.
3	**Amendment in column No. 3 (Description of goods) of Sr. No. 368 and 368A of Custom Notification No. 12/2012-Cus dated 1.3.2012.**	
	Description of goods covered under Sr. No. 368 and 368A read as "Goods specified in List 16 required for construction of roads." Some road projects involve only construction of bridges. Since notification extend benefit only for Road Project and custom may not extend benefit to Bridge project.	Construction of bridges in nothing but roads. Therefore, description of goods should be amended as "Goods specified in List 16 and List 16A required for construction of roads / bridges".