Impact of the Union Budget 2016 on the Infrastructure Sector

03 March 2016

Background

The Finance Minister presented the Union Budget 2016-17 in the backdrop of an Economic Survey which projected GDP growth of between 7 to 7.5%. The budget proposals have been built on the agenda of 'Transforming India' with the Finance Minister recognizing 'infrastructure and investment' as one of the nine important support pillars of this agenda. Infrastructure is one of the key factors responsible for sustainability of an economy's growth trajectory. The success of Government's flagship schemes such as 'Make in India', 'Startup India' and 'Digital India initiative' is critically dependent upon a robust infrastructure sector. The focus of Budget 2016 on infrastructure sector is evident from an enhanced outlay of Rs.2,21,246 crores for the sector in 2016-17.

Policy Announcements:

Roads and Railways

An amount of Rs. 55,000 crores has been proposed to be allocated for roads and highways to be further topped up by additional Rs. 15,000 crores to be raised by the National Highways Authority of India (NHAI) through bonds.

Necessary amendments are proposed to be enacted in the Motor Vehicles Act to open up the road transport sector in the passenger segment.

The total outlay on roads and railways for FY 2016-17 is estimated to be Rs.2,18,000 crores.

Ports and airports

It is planned to develop new greenfield ports both in the eastern and western coasts of the country. A sum of Rs. 800 crores has been provided for this initiative.

In the civil aviation sector, the Government is drawing up an action plan for revival of unserved and underserved airports. There are about 160 airports and air strips with State Governments which can be revived at an indicative cost of Rs.50 crores to Rs.100 crores each.

Gas Production

The Government is considering the incentivization of gas production from deep-water, ultra-deep water and high pressure-high temperature areas which are presently not exploited on account of higher cost and higher risks.

Necessary measures would be taken, first, to provide calibrated marketing freedom; and second, to do so at a pre-determined ceiling price to be discovered on the principle of landed price of alternative fuels.

Power

In the power sector, the need to diversify the sources of power generation for long term stability has been felt. The Government is drawing up a comprehensive plan, spanning the next 15 to 20 years, to augment the investment in nuclear power generation. The Government is committed to achieve 100% village electrification by 1st May, 2018.

Revival of private sector confidence in infrastructure

The following three new initiatives have been announced in the budget to reinvigorate the infrastructure sector:

a. Introduction of Public Utility (Resolution of Disputes) Bill to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts;
b. Issue of guidelines for renegotiation of PPP Concession Agreements; and
c. Development of a new credit rating system for infrastructure projects which gives emphasis to various in-built credit enhancement structures, instead of relying upon a standard perception of risk which often result in mispriced loans

Direct Tax Proposals

Phasing out of deductions

Based on the roadmap proposed for phasing out of exemptions and deductions and taking into account the response of stakeholders in this regard, the following incentives available for infrastructure sector are proposed to be phased out in following manner:

<table>
<tr><th>Section</th><th>Proposed phase-out</th></tr>
<tr><td>Section 80-IA: Deduction in respect of profits derived from development, operation and maintenance of an infrastructure facility</td><td rowspan="3">No deduction shall be available if the specified activity commences on or after 1 April, 2017</td></tr>
<tr><td>Section 80-IAB: Deduction in respect of profits derived from development of SEZ</td></tr>
<tr><td>Section 80-IB (9): Deduction in respect of profits derived from production of mineral oil and natural gas</td></tr>
<tr><td>Section 32 read with Rule 5 of Income-tax Rules – Accelerated Depreciation (e.g. 80% in case of windmill)</td><td>Highest rate of depreciation under the Act to be restricted to 40% w.e.f. 1 April, 2017</td></tr>
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Deduction under section 35AD for infrastructure facility

While 1 April, 2017 has been proposed as a sunset date in respect of commencement of development, operation and maintenance of an infrastructure facility to avail profit-linked tax holiday u/s 80-IA, it is proposed to amend section 35AD to permit deduction @ 100% of capital expenditure in case of such activity w.e.f. 1 April, 2017. Currently, section 35AD providing for capital linked incentive does not cover the activity of development, operation and maintenance of an infrastructure facility.

Incentives for promoting 'Housing for All'

With a view to incentivize an affordable housing sector as a part of larger objective of 'Housing for All', it is proposed to insert new section 80-IBA providing for 100% deduction of the profits from developing and building affordable housing projects if such project is approved by the competent authority after 1 June 2016 but on or before the 31 March, 2019 subject to certain conditions.

It is also proposed to provide additional deduction of up to Rs. 50,000 in respect of interest on loan taken for acquisition of residential house property from any financial institution u/s 80EE. This incentive is proposed to be extended to a house property of a value less than Rs.50 lacs in respect of which a loan of an amount not exceeding Rs.35 lacs has been sanctioned during the period from 1 April, 2016 to the 31 March, 2017. This amendment is proposed to take effect from 1 April, 2017.

Additional depreciation for power transmission sector

The benefit of additional depreciation @ 20% u/s 32(1)(ilia) currently available to assessee engaged in the business of manufacture or in business of generation or distribution of power has been proposed to be extended to an assessee engaged in business of transmission of power. This amendment is proposed to take effect from 1 April, 2017.

Dividend Distribution Tax (DDT) exemption on distribution made by an SPV to business trusts (REITs and InvITs)

To further rationalize the tax regime for business trusts and its investors, it is proposed to provide an exemption from levy of DDT in respect of distributions made by and SPV to a business trust. Such dividends are further not taxable in hands of investors. Such exemption would be available provided the business trust holds 100 per cent share capital or holds all the share capital except which is required to be held by other entity as part of any direction of any government or specific requirement of any law to this effect or which is held by government or government bodies. Such exemption of DDT shall be only in respect of dividends paid out of current income after the date when business trust acquires the required shareholding in SPV. This amendment is proposed to be effective from 1 June 2016.

Long term capital gain (LTCG) upon transfer of shares held in a Private Company

The current provisions of section 112(1)(c) prescribes a rate of 10 per cent on LTCG arising from transfer of securities, whether listed or unlisted. The meaning of the term, "securities" can be referred to in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 (32 of 1956) ('SCRA'). There has been uncertainty as to whether the shares of private company can be treated as "securities".

To bring in requisite clarity, it is proposed to amend the provisions of section 112(1)(c), so as to provide that LTCG 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. This amendment is proposed to be effective from 1 April 2017.

Indirect Tax Proposals

Central Excise

Basic excise duty rate remains unchanged @ 12.50%

Basic excise duty rate on certain parts of railway/ tramway locomotives or rolling stock reduced from 12.50% to 6%. (*w.e.f 1 March 2016*)

Oil Industries Development cess reduced from INR 4500 PMT to 20% ad valorem on domestically produced crude oil. (*w.e.f 1 March 2016*)

Clean Energy Cess renamed as Clean Environment Cess and increased from INR 200 to INR 400 per ton on coal, lignite and peat. (*w.e.f 1 March 2016*)

Price charged under Standard Exchange Scheme would be value for customs purposes for import of parts for repair or overhaul of aircrafts, subject to specified conditions. (*w.e.f 1 March 2016*)

Ready mix concrete manufactured at the site of construction also exempted. (*w.e.f 1 March 2016*)

Customs

Rate of BCD retained at 10%. Effective peak rate of customs duty remains at 29.44 per cent.

Customs duty rates have been rationalised for all types of coal, this would resolve classification disputes. (*w.e.f. 1 March 2016*)

CENVAT Credit

All changes effective from 1 April 2016.

Definition of capital goods expanded to include

- Wagons of sub heading 8606 92
- Capital goods used as equipment and appliance used in an office in the factory
- All capital goods having value up to INR 10,000 per piece are being included in the definition of inputs.

Eligibility of Cenvat credit for assessees having both taxable and exempt transactions has been clarified, wherein any input service utilised for exclusively providing a taxable transaction would be fully creditable. However, the existing Rule 6 would continue to be in operation up to 30 June 2016 for units who are required to discharge the obligation in respect of FY 2015-16. (*w.e.f. 1 April 2016*).

"First in first out" method used for determining utilization of CENVAT credit under Rule 14 omitted

CENVAT credit of service tax paid on upfront charges for assignment of natural resources such as spectrum, mining rights, etc to be allowed over a period of right to use such assigned resources. This could adversely impact cash flows.

Service Tax

No change in Service Tax rate of 14% and Swachh Bharat Cess rate of 0.5%.

However, Krishi Kalyan Cess at the rate of 0.5% on the value of service proposed to be levied, resulting into effective service tax rate @ 15% (*w.e.f 1 June 2016*)

Proposal to introduce an annual Service tax return which is to be filed by the Service tax assesses rendering services above a certain threshold. (*w.e.f. 1 April 2016*)

Allowing refund of tax collected previously in relation to public welfare projects such construction of canals, dams, educational establishment, port, airport, etc subject to specified conditions. (*Effective from the date of enactment of Finance Bill)*

Restoration of exemptions to public welfare projects such as construction of educational establishment, port, airport, etc up to March 2020, where the contract contracts were entered prior to 1 March 2015. (*w.e.f 1 March 2016*)

Withdrawal of exemption to services provided by way of construction, erection, commissioning, or installation of original works in relation to monorail or metro except in case of contracts entered prior to 1 March 2016. (*w.e.f 1 March 2016*)

Proposal to provide for uniform abatement of 70% in respect of construction of a complex, building, civil structure instead of present varying rates of 75% and 70% which applied to residential complex with specified features and other constructions respectively. *(w.e.f. 1 April 2016)*

Exemption for construction of civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers *(w.e.f. 1 March 2016)*

Exemption for construction of civil structure or any other original works pertaining to the "Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana" *(w.e.f. 1 March 2016)*

Exemption for construction of original works pertaining to low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana and any housing scheme of a State Government. *(w.e.f. 1 March 2016)*

Exemption for construction erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration to Government, a local authority or governmental authority, to be exempt from Service tax. *(w.e.f. 1 March 2016)*

Exemption for construction of civil structure or any other original works for predominant use other than for commerce, business and profession.

Exemption for construction of structure meant predominantly for use as educational, clinical, art or cultural establishment; and

- The above exemption is available for a limited period in respect of contracts entered into before 1 March 2015 and on which appropriate Stamp duty has been paid prior to such date. The exemption shall cease to operate on or after 1 March 2020.
- The exemption is proposed to be extended retrospectively during the period from 1 April 2015 to 29 February 2016.

CST

Co-mingled and fungible gas transported through a common carrier pipeline or any other transportation medium which moves from one state to another shall be deemed to be movement of goods from one state to another.

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