BCC&I
THE BENGAL CHAMBER

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THE BENGAL CHAMBER

**POST BUDGET RECOMMENDATION ON SERVICE TAX**

| Sl. No. | Issue | As provided in the Finance Bill 2016 | Further Amendment sought | Rationale for Amendment sought |
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| 1. | **Services to Government, local authority or governmental authority** | Exemption withdrawn for:<br>i) construction of civil structure related to non-commercial activities;<br>ii) educational, clinical or cultural establishment; and<br>iii) for residential complex constructed for self-use or use of employees<br>has been reinstated, provided contract was entered prior to 1st March, 2015 and stamp duty has been paid prior to said date.<br>Also, exemption is time bound till 1st April, 2020.<br>Also, for the intervening period of 1.4.15 to 29.2.16, refund may be claimed within 6 months. | 1. Amendment to Cenvat credit rules in respect of Cenvat utilised or unutilised.<br>2. Waiver of interest, penalty in case CENVAT reversal leads to payment of tax.<br>3. Instead of refund, adjustment of tax must be enabled.<br>4. The condition related to payment of stamp duty to be done away with. | 1) If Cenvat availed and utilized for the period Apr-15 to Feb-16 is required to be reversed - then suggest not to impose interest and penalty with suitable amendment in Cenvat credit rules.<br>2) Also, if CENVAT reversal results in payment of tax pertaining to intervening period, interest and penalty should be waived off for the same.<br>3) Since claiming of refund is a cumbersome process and considering the cash outflow our suggestion is to amend the service tax rules to introduce self adjustment of tax paid for exempted projects in April-16 or subsequent months<br>4) With respect to payment of stamp duty for getting exemption wef April-15 - Please clarify which stamp duty payment is referred to and at what point in time the same needs to be paid and by whom?<br>Also, to avoid dispute with respect to claiming of exemption for all these non-commercial projects these condition can be |

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| | | | | done away with. |
| **2.** | **Construction of port or airport** | Exemption has been reinstated for construction of port or airport for contracts entered prior to 1.3.2015 and stamp duty has been paid wherever applicable prior to such date. Also, wherever applicable, certification from Ministry has been mandated. The exemption shall be available only upto 1.4.2020.<br>Also, for the intervening period of 1.4.15 to 29.2.16, refund may be claimed within 6 months | 1. Amendment to Cenvat credit rules in respect of Cenvat utilised or unutilised.<br>2. Waiver of interest, penalty in case CENVAT reversal leads to payment of tax.<br>3. Instead of refund, adjustment of tax must be enabled.<br>4. The condition related to payment of stamp duty to be done away with. | 1)If Cenvat availed and utilized for the period Apr-15 to Feb-16 is required to be reversed - then suggest not to impose interest and penalty with suitable amendment in cenvat credit rules<br>2) Also, if CENVAT reversal results in payment of tax pertaining to intervening period, interest and penalty should be waived off for the same.<br>3) Since claiming of refund is a cumbersome process and considering the cash outflow our suggestion is to amend the service tax rules to introduce self adjustment of tax paid for exempted projects in April-16 or subsequent months<br>4) With respect to payment of stamp duty for getting exemption wef April-15 - Please clarify which stamp duty payment is referred to and at what point in time the same needs to be paid and by whom?<br>Also, to avoid dispute with respect to claiming of exemption for all these non-commercial projects these conditions of stamp duty and certification from Ministry can be done away with |

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| **3.** | **Construction, etc. of canal, dam or other irrigation works for Govt., local authority or governmental authority** | Exemption has been brought in for the period 01.07.2012 to 29.01.2014, i.e., for the period prior to change in "governmental authority" definition<br>Refund can be sought within 6 months | 1. Amendment to Cenvat credit rules in respect of cenvat utilised or unutilised.<br>2. Waiver of interest, penalty in case CENVAT reversal leads to payment of tax.<br>3. Instead of refund, adjustment of tax must be enabled. | 1)If cenvat availed and utilized for the period Apr-15 to Feb-16 is required to be reversed - then suggest not to impose interest and penalty with suitable amendment in cenvat credit rules<br>2) Also, if CENVAT reversal results in payment of tax pertaining to intervening period, interest and penalty should be waived off for the same.<br>3) Since claiming of refund is a cumbersome process and considering the cash outflow our suggestion is to amend the service tax rules to introduce self adjustment of tax paid for exempted projects in April-16 or subsequent months |
| **4.** | **Monorail & Metro construction** | Exemption for monorail and metro construction has been withdrawn. However, for contracts entered prior to 1.3.2016, exemption shall remain available | Continuation of exemption | Since these are all infrastructure projects exemption should continue for such projects. |
| **5.** | **Renting of motor cab** | Explanation has been added in notification to clarify that for service tax calculation, fair market value of all | Additional cost must not be considered for calculation of tax | Since service tax paid (forward/reverse charge) on renting of motor vehicle is not eligible for adjustment as Cenvat-this will increase the cost and our suggestion is to |

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| | | goods including fuel and other services shall be added whether or not supplied under same contract | | exclude such clause to avoid further additional cost |
| **6.** | **Type of Affordable Housing Scheme entitled to exemption from Service Tax** | Exemption from Service Tax on construction of affordable houses upto 60 sqm under any scheme of the Central or State Governments including PPP schemes. | It is suggested that the concerned Section of the Finance Bill 2016 also clarify by stating that affordable housing schemes undertaken by private developers on standalone basis will also be entitled to Service Tax exemption for all housing units upto 60 sqm. | The Ministry of HUPA has clarified that all the benefits under Prime Minister's Awas Yojana for Affordable Houses will be available to Projects undertaken by Private Developers on standalone basis, provided the conditions as laid down in the guidelines are complied with. |
| **7.** | **Krishi Kalyan Cess** | A Krishi Kalyan Cess @ 0.5% is proposed to be levied on value of all taxable services with effect from 1st June 2016 for initiatives to promote agriculture or for any other related purpose | a. Input tax credit of Krishi Kalyan Cess be allowed to both providers of output services as well as manufacturers of excisable goods.<br>b. Permit refund of service tax, including Krishi Kalyan Cess, paid by entities engaged in the agri-sector in cases where CENVAT credit cannot be availed due to exemption of the output product/service. | Denial of input tax credit of this cess to manufacturers while providing it to service providers is not only inequitable but is also contrary to the objectives of "Make in India" since the cess will only serve to increase the cost of manufacture in the country. Further, since the stated objective of Krishi Kalyan Cess is to provide support to the agricultural sector in the country, entities engaged in the agri-sector that contribute to the development of this sector by training of |

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| | | | | cultivators, introduction of sustainable agricultural techniques and practices, high quality seeds, crop development, procurement of agri-inputs and so on need to be incentivized instead of being burdened with additional taxes. |
| **8.** | **Show Cause Notice** | The time-limit for issuance of Show Cause Notices (SCN), in cases that do not involve any suppression, willful misstatement, collusion or fraud is being increased from 18 months to 30 months in case of Service Tax. | Status-quo should be maintained on time-limits for issuance of Show Cause Notices and the Union Budget proposal for increasing the time-limits should not be implemented. | Increase the number of frivolous SCNs and put additional pressure on Appellate that are already overburdened with a plethora of litigation. Moreover, such a move creates uncertainty and goes against the Government's stated objective of improving "ease of doing business" in the country. |
| **9.** | **Cenvat allowability for Financial Services/NBFC** | - | The provision in terms of Rule 6(3B) of the CENVAT Credit Rules 2004, provides that a Banking/ Non Banking Financial Company/institution (NBFC) would be entitled for Cenvat Credit to the extent of 50% only. The theme and spirit of the provision thus extends credit eligibility to the extent of 50% only to a NBFC. Accordingly as a NBFC, we are in the | Clarification is required from Ministry of Finance ( CBEC) as to whether in terms of the provision of Rule 6(3B) of the Cenvat Credit Rules, availing of 50% of the credit at the very inception stage and charging the balance 50% to the Profit and Loss account as expense, is correct and precise. Further clarification is required as to whether the present practice which we are following since 1-04-2011, gives due effect to the theme and spirit of the provision as laid down |

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| | | | practice of availment of only 50% of the Cenvat. | as per Rule 6(3B) of the Cenvat Credit Rules. |
| **10.** | **Clarification in respect of availment of CENVAT Credit against Invoices which are of the period prior to 01.09.2014** | - | Sub-rule (1) of Rule 4 of the CENVAT Credit Rules, 2004 lays down the conditions for availing CENVAT Credit on inputs. Similarly, sub-rule (7) of Rule 4 lays down the conditions for availing CENVAT Credit on input services. In both the above sub-rules, the following proviso has been inserted:<br><br>*"Provided also that a manufacturer or the provider of output service shall not take CENVAT Credit after six months of the date of issue of any of the documents specified in sub-rule (1) of Rule 9". The said provision was amended vide 2015-16 budget notification 6/2015-CE(NT)*<br><br>In terms of the above mentioned notification the time limit for availment of Cenvat credit was extended from 6 | A suitable notification/clarification in respect of above will help in removing the doubt in respect of availment of CENVAT Credit pertaining to the period prior to 01.03.2015. |

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| | | | months to 1 year, w.e.f March 1, 2015.<br><br>According to the above proviso and notification, CENVAT Credit has to be availed within 1year of the invoice date. This amendment is effective from 01.03.2015<br><br>The amendment in CENVAT Credit Rule is silent about the treatment of CENVAT Credit for Invoices which pertains to the period prior to 01.03.2015. | |
| **11.** | **Service Tax vis-à-vis Securitisation** | - | Tax officers across the country have notion that some elements of services are embedded in Securitization process, but Securitization does not involve any service consideration other than the gain of interest. An NBFC does not provide any service to the Banks except minor services like documentation viz. maintenance of sub-ledger of the | Suitable clarification should be issued by CBEC clarifying that no Service Tax would be levied on any financial gain arising to the Originator (i.e. NBFCs) on account of Securitization of any financial assets such as loan, receivables as well as on the assumption/presumption that the NBFCs provide any services on account of Securitization of financial asset or receive any consideration for such transactions. |

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| | | | borrowers etc.<br><br>'Securitization' process in the business of advancing finance to its customers for infrastructure and/or assets financing can be understood from the its definition given as under :<br><br>"Securitization is the financial practice of pooling various types of contractual debt. The principal and interest on the debt, underlying the security, is paid back to the various investors regularly. Securities backed by mortgage receivables are called mortgage-backed securities (MBS), while those backed by other types of receivables are called asset-backed securities (ABS)."<br><br>Securitization is a gain of interest and it does not constitute any element of service consideration. The gain of interest accrues from the difference between the interest earned from commercial | |

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| | | | lending and interest spent on commercial borrowings. Hence, the levy of Service Tax on interest element embedded in the Securitization of a financial asset on the presumption that some element of service is also involved is not only illegal but also ultra vires. | |
| **12.** | **Adjustment of Service Tax paid when amounts due are 'written-off'** | - | After implementation of Point of Taxation rules, payment of service tax has been changed from receipt basis to accrual basis, meaning thereby, Service tax is required to be deposited irrespective of receipt of payment. In a situation where the service recipient does not make the payment to the service provider and such amount is required to be written off as a bad debt by the service provider, the provisions under Rule 6(3) of Service Tax Rules does not offer any relief. In absence of relief of bad debts Rule 6(3) | Rule 6(3) of the Service Tax Rules may be amended suitably so that service fee reversed / written off be allowed to be adjusted against service tax liability for the subsequent period. |

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| | | | of Service Tax Rules, the tax paid on accrual basis becomes cost and burden on service providers. | |
| **13.** | **Exemption from tax for imparting services to Government or Govt.-funded development programmes in rural sector to meet the Socio Economic Objectives of Government of India** | - | Many a times private entrepreneurs join hands with Government Authorities for implementing projects developing in the Rural areas for masses to achieve the overall socio-economic objectives of Government of India by forming Public-Private Partnerships.<br><br>For providing concessional and/or free of cost aforesaid types of services, the Government gives grant-in-aid as well as support fund or Viability Gap Fund to the assessee. Such grants as well as support fund or Viability Gap Fund, do not represent any consideration for services provided by the assessee, **by whatever name it may be called**. | Exemption from service tax should be provided to all stake holders i.e. Govt. Institutions/Implementing Agencies/Private Partners and other entities or person attached with stakeholders in implementing development programmes in rural sector to meet the socio-economic objectives of Government of India. Further, the receipt of Government Grant should specifically be covered by the Negative List of Services specified in the Act. |

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| | | | However, Service Tax Authorities have been issuing show-cause notices and also raising demands for Service Tax on the aforesaid grants-in-aid as well as support fund or Viability Gap Fund received by assessee from Government of India. | |
| **14.** | **Mandatory Pre-deposit at the time of filing 1st stage and 2nd stage Appeal** | - | There is a provision of mandatory pre-deposit of 7.5% and 10% respectively for filing and appeal before the Commissioner (Appeal) at the first stage and before the Tribunal at the second stage against the disputed demand of duty or duty and penalty or disputed penalty where only penalty has been imposed. The amount of pre-deposit payable would be subject to a ceiling of Rs. 10 crore. All pending appeals / stay application would be governed by the statutory provisions prevailing at the time of filing such stay applications | The aforesaid proposal for mandatory fixed pre-depositing of taxes / duties may kindly be withdrawn. |

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| | | | /appeals. The aforesaid implementation of this new provision can be abused by Revenue Authorities in order to harass honest assesses. Further, provision of mandatory deposit is creating an unnecessary extra financial burden on assessee against the remedial measures undertaken by the assessee against the disputed demand. | |

**POST BUDGET MEMORANDUM ON CENTRAL EXCISE**

| Sl. No. | Issue | As provided in the Finance Bill 2016 | Further Amendment sought | Rationale for Amendment sought |
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| 1. | **Ready Mix Concrete** | Exemption has been provided to Ready mix concrete manufactured at the site of construction for use in construction work at such site. Site means any premises made available for the manufacture of goods by way of a specific mention in the contract or agreement for such construction work, provided that the goods manufactured at such premises are solely used in the said construction work only. | The exemption must be introduced with retrospective effect. | Considering the wide spread impact on construction industry our suggestion is to issue specific clarification that exemption is with retrospective effect since such concrete produced at site is used only for captive consumption. |
| 2. | **Cigarettes** | In the Union Budget of February 2016, , the rates of duty on cigarettes across all existing length segments has been increased by 10%, which is significantly higher than prevailing inflation rate (CPI) of about 5.5%. | a. The increases in excise duty rates on cigarettes in the Union Budget 2016 be moderated to current CPI level of about 5.5% to check the shift of consumption to cheaper tax inefficient alternative forms of tobacco products and illicit | a. Punitive increase in cigarettes taxes has led to steep decline in cigarette industry volumes.<br><br>b. The substantial drop in volumes of legal cigarettes has led to a consequent drop in demand for FCV tobacco resulting in significant decline in farmer earnings and causing acute farmer distress. This has also resulted in tragic cases of |

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| | | | products.<br><br>b. All future increases in excise duties be bench-marked to inflation levels in the economy. | farmer suicides. The problem has been further aggravated by reduction in authorised crop size by the Tobacco Board by about 20% (from276 million kg to 220 million kg) for 2016 season.<br><br>c. The growth of the already large illegal cigarette segment will be fueled further by the higher tax arbitrage consequent to the increase in excise duty rates announced in the Union Budget.<br><br>d. Cigarette focused taxation policy which does not recognise India's unique pattern of tobacco consumption is sub-optimising revenue collections from the tobacco sector and undermining the tobacco control objectives of the Government. |
| **3.** | **Clean Environment Cess** | As per proposals of the Union Budget of 2016 the Clean Energy Cess (applicable to certain goods, including, inter-alia, Coal) is to be replaced by a Clean Environment Cess. The effective rate of this cess has been set at Rs. 400/- per MT as | Industry players who have already invested in adoption of less polluting "green technologies" be exempted from levy of the Clean Environment Cess. For this purpose appropriate threshold limits of investment and types of | The paper industry sources some of its energy requirement through utilisation of green energy i.e., lignin content in the wood, which is recovered in soda recovery boiler for producing steam and in turn, power. But for this green fuel, the industry would have to consume more coal for meeting its energy requirement |

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| | | opposed to the Clean Energy Cess of Rs. 200/- per MT | investments that qualify may be prescribed. | which would be detrimental to the environment. An increase in the rate of cess from Rs. 200/- per MT to Rs. 400/- per MT only increases the cost of "Make in India" (since no cenvat credit is available in respect of this cess) without differentiating between players who have aggressively invested in "green technologies" and those who continue with technologies that cause higher environmental pollution. |
| **4.** | **Show Cause Notice** | The time-limit for issuance of Show Cause Notices (SCN), in cases that do not involve any suppression, willful misstatement, collusion or fraud is being increased from 12 months to 24 months in case of central excise.. | Status-quo should be maintained on time-limits for issuance of Show Cause Notices and the Union Budget proposal for increasing the time-limits should not be implemented. | Increase the number of frivolous SCNs and put additional pressure on Appellate that are already overburdened with a plethora of litigation. Moreover, such a move creates uncertainty and goes against the Government's stated objective of improving "ease of doing business" in the country. |
| **5.** | **Utilization of Accumulated Cenvat Balance of Education Cess and Higher Education Cess** | Accumulated Credit of Education Cess and Higher Education Cess on goods on which central excise is levied till 28th February. | It is recommended that appropriate amendments are made to the Cenvat Credit Rules, 2004 to either enable assessees to utilise accumulated credit balances of Education Cess | In the Union Budget of 2015 all goods on which central excise duty is leviable were exempted from Education Cess and Secondary & Higher Education Cess with effect from 1st March 2015. Subsequently, vide Notification No. 12/2015-C.E. (N.T.) dated 30th April |

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| | | | and Secondary & Higher Education Cess against central excise duty leviable under the First Schedule to the Central Excise Tariff Act or, enable refund of such credit balances to the assessees. | 2015 the CBEC brought about amendments in the Cenvat Credit Rules, 2004 whereby assessees were permitted to utilise the credit of such Cesses in respect of inputs and input services, paid on or after 1st March 2015 against liability of central excise duty leviable under the First Schedule to the Central Excise Tariff Act. No such provision was made in respect of accumulated credit of such Cesses till 28th February 2015. Consequently, such credit balances are lying idle in the hands of the assessees. |
| **6.** | **Cenvat Credit on Capital Goods** | In the Union Budget 2016, definition of Inputs has been amended to include *"all capital goods which have a value up to ten thousand rupees per piece".* This will enable availment of cenvat credit on such materials to the tune of 100% in the year of receipt. | To avoid idling of funds and improve cost competitiveness of Indian industry it is recommended that,<br>a. like in case of "inputs", assessees should be permitted to take 100% credit of duty paid on capital goods in the year of receipt itself, and,<br>b. in the event this is not considered feasible for some reason, the value limit of Rs. 10,000/- per piece | Setting up of capital intensive projects, for example, paperboards manufacturing facility involves on-site assembly and installation of many types of plant and machinery that are significantly large in size. Consequently, a lot of plant and machinery are brought into the plant site in a 'knocked-down' or unassembled state and, thereafter, assembled at location. Also, many of the equipment are fabricated and installed directly at the site on procurement of basic materials like HR Plates, Plates, MS Plates, MS |

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| | | | proposed for capital goods on which 100% cenvat credit can be availed in the year of receipt should be increased to a meaningful level, say, Rs. 5,00,000/- per piece. | Channels, MS Angles, etc.<br><br>The deferral of 50% of cenvat credit in respect of capital goods to the next financial year results in substantial blockage of working capital since significant investment on capital goods is necessary for such projects. Consequently, "Make in India" is also more expensive due to the idling of funds. The relief proposed in the Union Budget of 2016 in respect of capital goods valued up to Rs. 10,000/-, though a positive development, is grossly inadequate. |

**Punitive increase in cigarettes taxes has led to steep decline in cigarette industry volumes.**

- The cigarette industry has already been subjected to successive years of steep increases in the previous four Union Budgets, which have had the inevitable consequence of a negative growth (-11%) in shipments from cigarette factories for the financial year 2015-16 and a subdued 4.6% growth in excise collections. There has been 23% decline in industry volumes over the last 4 years.
- In the last 4 years the Government has been following a policy of steep and continuous increase in excise duty rates on cigarettes resulting in a 98% increase in duty which is well beyond inflation (34%) during this period. The revenue collections during the period grew only by 42% thus making it apparent cigarette excise duties are yielding diminishing returns.
- Cigarette taxes In India are amongst the Highest In the world - An analysis of the WHO Report on Tobacco Taxation, 2015 reveals that at 6.5% cigarette taxes (Excise Duty & State Taxes on 2,000 cigarettes as a percentage of per capita GDP) in India are amongst the highest in the world. They are 13 times higher than USA, 9 times higher than Japan, 7 times higher than China, 5 times higher than Australia and 3 times higher than Malaysia and Pakistan.
- Consequently, Cigarettes In India are amongst the most expensive In the world - As per the WHO Report on the Global Tobacco Epidemic, 2015, affordability of cigarettes is measured as a ratio between price of 2000 cigarettes and per capita GDP. In India this ratio is 10.8%, which is higher than most developed and developing countries (e.g. USA 1.14%, Russia 1.31%, Germany 1.55%, Canada 1.68%, China 2.14%, Australia 2.53%, UK 2.87%, and Pakistan 3.73%). Such data contained in the Report clearly indicates that cigarettes are less affordable in India than most other countries.

**The substantial drop in volumes of legal cigarettes has led to a consequent drop in demand for FCV tobacco resulting in significant decline in farmer earnings and causing acute farmer distress**

- The sharp and unprecedented fall in Legal Cigarette volumes and the consequent reduction in the utilization of FCV tobacco in cigarette manufacture have reduced farm earnings of the Tobacco farmers in the major Flue Cured Virginia (FCV) growing regions.

**FCV Tobacco Crop Situation in Andhra Pradesh**

| **Auction Year** | **Marketed Quantity** (Million Kgs.) | **Average Price** (Rs./Kg.) |
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| 2014 | 213 | 119.43 |
| 2015 | 190 | 93.0 |
| **Change (%)** | **(-) 11%** | **(-) 22%** |

*Source: Tobacco Board, Govt. of India*

- The ensuing unprecedented distress faced by the farmers has already resulted in tragic cases of farmer suicides. The reduction in domestic demand is quite noticeably transferring to the burgeoning illegal cigarette market which does not use tobaccos grown in India.
- The current scenario is also posing a serious challenge for the next crop season as the Tobacco Board has restricted the authorized crop size for Andhra Pradesh and Karnataka for the 2016 season to 220 Million kg. compared with the 276 Million kg. in 2015. With no equally remunerative, viable alternative crop which the farmers can grow on their unused land, the situation is grave for the FCV tobacco growers as less production would severely affect their earnings in the 2016 season.
- It is relevant to note that the legal cigarette industry has always stood by the farmers and picked up excess stock, beyond its production and inventory requirements, in instances of unfavourable market conditions. However, the cumulative impact of successive years of sharply escalating taxes and extreme regulations continue to overwhelm the tax-paying, compliant legal industry with devastating impact on its volume base and the connected leaf requirement. In fact, even currently, the domestic legal industry is holding inventories of leaf tobacco at levels much higher than the prescribed industry norms.

**The growth of already large illegal cigarette segment will be fueled further by the higher tax arbitrage consequent to the increase in excise duty rates announced in the Union Budget**

- Under the existing high tax regime for cigarettes, the duty evaded, illicit cigarette market (comprising both domestic tax evaded and international smuggled) continues to grow unabated even as the legal cigarette volumes continue to decline. According to Euro monitor International, a renowned global research organization, illegal cigarettes have nearly doubled in last 10 years from 11.1 billion sticks in 2004 to 22.8 billion sticks in 2014, making India the 4th largest illegal cigarette market in the world. In fact, a recent FICCI Study, 'Illicit Markets – A Threat to our National Interests' estimates the overall market for illegal cigarettes in India at a significant 20.2% of the Cigarette Industry having grown from 15.7% in 2010, resulting in a huge revenue loss of Rs.9,139 crores to the national exchequer. The

increase in the smuggling of cigarettes was also confirmed by the Union Minister of State for Finance Mr. Jayant Sinha in an answer to parliamentary question.[1]

- With Industry vacating the Rs. 2 price point, the gap between legal and illegal cigarettes has only increased giving fillip to unscrupulous and fly-by-night manufacturers resorting to clandestine removal of cigarettes from their factories without payment of taxes. As a result their products are available in the market for Re. 1 per stick, a price which is even lower than the applicable excise duty / VAT rates.
- In fact, in recent times with the industry being forced to vacate the Rs.2 price point, a new and attractive Rs.2 king size (85mm) contraband segment has emerged in the market garnering a substantial portion of down-trading legal cigarette volume and is posing a major threat to the legal industry.

**Cigarette focused taxation policy which does not recognize India's unique pattern of tobacco consumption is sub-optimizing revenue collections from the tobacco sector and undermining the tobacco control objectives of the Government**

- The tobacco consumption pattern in India is unique in that only 11% of the tobacco is consumed in the form of legal cigarettes. Yet, cigarettes contribute 87% of the Central Excise Revenue from tobacco. While the legal cigarette industry in India is in the organized sector and completely compliant with all regulations, the bulk of tobacco consumed in the country is largely produced in the unorganized sector which does not have compliance and enforcement. This large unorganized sector (estimated at nearly 70% of overall tobacco consumption) pays little tax either due to tax exemptions or evasion.
- The budget has not increased excise duties on biris and although, the machine capacity based excise duties on oral tobacco products like chewing tobacco, khaini, guthka and unmanufactured tobacco have been increased steeply, the overall taxation incidence is significantly lower than cigarettes. Moreover, this increase is likely to have a very marginal impact on other tobacco products considering that a majority of such products are manufactured in the unorganised sector. The recent increase in cigarette excise duty will only further increase the price gap between cigarettes and other tobacco products.

While cigarette consumption is highly sensitive to cigarettes prices, overall tobacco consumption is not. Besides, Indian consumers are known to consume tobacco in multiple forms i.e. both smoking and smokeless forms. The current proposal will only encourage shift in tobacco consumption to revenue-inefficient forms of tobacco from unorganized sector.

## POST BUDGET MEMORANDUM ON CUSTOM DUTY

| Sl. No. | Issue | As provided in the Finance Bill 2016 | Further Amendment sought | Rationale for Amendment sought |
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| **1.** | **Paper & Paperboards Industry** | Pulp of wood, wood in chips or particles or of other fibrous cellulostic material (excluding rayon grade wood pulp) can be imported at nil rate of customs duty when used for the manufacture, inter alia, of paper and paperboard, subject to fulfilment of certain conditions as prescribed in the above stated Rules. | Manufacturer importer should be allowed to use the imported goods for manufacture of paper and paperboard either within the same Unit (for which goods were originally intended for use) or in any other sister Unit (under the same IEC) of the manufacturer with an intimation to the jurisdictional Assistant Commissioner and without payment of any differential Customs duty or interest. | The new 2016 Rules prescribe, vide Rule 7(2) the conditions under which the unutilised goods, imported at the concessional rate of Customs duty, may be cleared by a manufacturer within a period of three months on payment import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest. However, nothing has been prescribed for transfer of such goods by the manufacturer from one unit to another sister unit (both with the same IEC). Accordingly, it is apprehended that the Department may disallow completely such transfers or allow the transfer only on payment of differential customs duty and interest, thus defeating the very purpose of imports at concessional rate of duty. This will only serve to increase the cost of "Make in India" and |

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| | | | | cause undue hardship to manufacturers. |
| **2.** | **Duty Drawback** | The effective rate of Service Tax was raised from 12.36% (inclusive of Education Cess) last year to 14.5% (upon introduction of Swachh Bharat Cess) and the effective rate is proposed to be increased further to 15% with effect from 1st June 2016 with the introduction of Krishi Kalyan Cess. Thus, the rate of Service Tax will undergo an increase of more than 21%. | Duty Drawback rates for all industry be increased appropriately to cover the more than 21% increase in rate of Service Tax. | There has been no corresponding increase in the duty drawback rates upon increase in the rate of service tax last year and no increase has been proposed this year either. Consequently, exporters who are already facing immense competition internationally and are under hardship due to diminishing exports for over one year are now saddled with an additional tax burden which will further impact adversely on exports. |
| **3.** | **Show Cause Notice** | The time-limit for issuance of Show Cause Notices (SCN), in cases that do not involve any suppression, willful misstatement, collusion or fraud is being increased from 12 months to 24 months in case of Customs. | Status-quo should be maintained on time-limits for issuance of Show Cause Notices and the Union Budget proposal for increasing the time-limits should not be implemented. | Increase the number of frivolous SCNs and put additional pressure on Appellate that are already overburdened with a plethora of litigation. Moreover, such a move creates uncertainty and goes against the Government's stated objective of improving "ease of doing business" in the country. |

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| **4.** | **Export Duty on Iron Ore** | Export duty reduced on:<br>a) Iron ore fines with Fe content below 58%: from 10% to Nil.<br>b) Iron ore lumps with Fe content below 58%: from 30% to Nil. | Continuation of Export Duty on Iron Ores | Export duty on iron ore fines and lumps should be continued on all the grades. This will result in easier availability of iron ore at reasonable price from local producers |

## POST BUDGET RECOMMENDATION ON CENTRAL SALES TAX

| Sl. No. | Issue | As provided in the Finance Bill 2016 | Further Amendment sought | Rationale for Amendment sought |
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| 1. | **Clarification over the tax exemption provision under Section 5(2) and 6(2) of the Central Sales Tax Act, 1956 (CST Act) towards the type of sales as defined under Section 2(g)(iv) of the CST Act – i.e. Transfer of Right to Use which in common parlance known as Operating Lease.** | - | The provision in terms of tax exemption under section Section 5(2) and 6(2) of the CST Act which extends exemption to tax upon sales, should also be equally applicable on sales under section 2(g)(iv) of the CST Act which is transfer of right to use (operating lease). This exemption should not be only restricted to sales under Section 2(g)(i) of the CST Act only (i.e. outright sale or sale by way of transfer of ownership) . According to various field formations, the Sales Tax authorities have read and misinterpreted the said provisions in a manner, such that the said exemption would not be applicable to sales under section 2(g)(iv) – Operating lease.<br><br>The provision as per Section 5(2) and 6(2) though does not specifically denies the tax exemption benefit to a lease transaction but it remains silent as to whether the said exemption is applicable to sales made under section 2(g)(iv) of the CST Act. | Request detailed clarification over whether the exemption provision under section 5(2) and 6(2) of the CST Act, is equally applicable to all categories of sale as per section 2(g) of the CST Act. |
| 2. | **Multiplicity of taxes - Service Tax and VAT on same transaction** | | There are **instances of incidence of multiple taxes on the same transaction**, e.g. Rental of equipment/plant & machinery on hire. While service tax is being paid on rental under "Supply of Tangible Goods" including machinery, equipment, appliances, etc., State Governments are interpreting it as a | The legislative should endeavor in laying down conditions precedent involved in both the above transactions i.e. |

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| | | | Deemed Sale and raising demand by levying VAT under "Right to use" of goods as per the amended provisions of Article 366(29A) of The Constitution of India.<br><br>**Two constitutional levies cannot simultaneously be imposed on the same value of the transaction**. The dual levy is a result of interpretations by respective authorities. As a result, prudent tax payers are getting burdened and suffering due to this and are getting hit by tax demands which cannot be recovered also. In the present economic scenario in India, the double taxation is making businesses unviable. This is adversely impacting the growth of the rental and leasing industry. Further, the plethora of ongoing litigation on such cases not only adds to the cost of running the business but also increases the exchequer's cost unnecessarily.<br><br>The root cause of the problem is the absence of sufficient clarity on definition of both the term e.g. **"Rental Income on Supply of Tangible Goods" under present Service Tax Law** and **"Right to use" in the State VAT Laws.** | that of deemed service and deemed sales more explicitly and clearly which will avoid the incidence of double taxation and also reduce unnecessary litigation. |

## POST BUDGET RECOMMENDATION INCOME TAX

| Sl. No. | Issue | As provided in the Finance Bill 2016 | Further Amendment sought | Rationale for Amendment sought |
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| 1. | **Built Up Area versus Carpet Area** | The Finance Bill provides for 'built up area' for size of dwelling units. | 'Carpet area' and not 'built up area' should be considered for the purpose of defining sizes of dwelling units | The Prime Minister's Awas Yajona and the Real Estate Regulation Bill (RERA) provide for Carpet area for defining the all types of dwelling units. In the interest of uniformity of practice it should be prudent to also have Carpet Area and not built up area in the Finance Bill 2016. |
| 2. | **Size of dwelling Unit** | 100% deduction for profits to an undertaking in Housing Project for flats upto 30 sqm in 4 metro cities (Kolkata, Chennai, Delhi &Mumbai) and 60 sqm in other cities, approved during June 2016 to March 2019 and completed in 3 years. | Request for changing the flat size to 60 sqm in the 4 metro cities, from the existing 30 sqm. | The economic status and the cultural habits of residents in Metro cities are distinctly different from cities elsewhere and the dwelling units that the Affordable segments can sell well in the market are 2-Bedroom flats. Following rational building rules, 2-Bedroom flats cannot be provided in 30 sqm. Again, 30 sqm flats are usually built for welfare purposes at subsidised prices. Therefore, in order to enable development of Affordable Houses based on viable business models, the benchmark for flsts in Metro cities should be upto 60 sqm and the benefits under the Finance Bill 2016 should be extended to this category of flats. |
| 3. | **Section 43CA, Section 50 (C) and Sec** | | • It is recommended that the applicability of | The two provisions viz. Sec 43CA & Sec 56 (2) (vii) of the Income Tax Act 1961, taken together, put undue financial |

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| | **56 (2) (vii) of the Income Tax Act, 1961** | | provisions of section 43CA Section 50 (C) & Section 56 (2) (vii) should be done away with in case of real estate transactions.<br>• Any suspected understatement of consideration should be tackled by investigation mechanism and not by such an amendment. | burden on both property buyers and sellers and thus lead to reduction in volume of Real Estate transactions. The Developers' community has been raising objections to this through various fora. It is very common across regions and cities that Circle Rates/Jantri Rates are found to be higher than the actual transaction values, more so particularly in West Bengal. The Circle Rates are found to be irrationally fixed in that they do not account for certain finer attributes of dwelling units that have reflections on selling prices.<br>Further, there are situations when the developers are compelled to sell their flats at discounted rates owing to market conditions. The resultant computation of Notional income gets enhanced further and thus put additional Income Tax load.<br>Now the differences in the values are taken as accrued income to developers and purchasers alike through the provisions of Sec 43CA and Sec 56 (2) (vii) and both the parties are made to pay income tax on the notionally accrued income.<br>Apart from the issue of putting undue burden on both developers and purchasers, these provisions discourage registration of properties and thereby result in loss of revenues to Governments.<br>Under Sec 50 C, owners of properties, holding such |

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| | | | | properties as Capital Asset, are taxed on the basis of the prevalent Circle Rates, even though the actual transaction value is less than the same.<br>This is again an unjust financial load on the owners of such properties. Moreover, when an old property is transacted, not only the Stamp Valuation Authority applies the valuation of a normal building but also the Seller gets a much lower price than normal buildings due to age of such building.<br>Hence removal of these three regressive provisions would restore justice.<br>This is also needed for ensuring Ease of Doing Business |
| **4.** | **Section 22:**<br>**Provides for taxation of house property owned on the Annual Letting Value ('ALV'), on notional basis, even if no rent is actually received;**<br>**Such provisions are not applicable to property occupied for the** | | It is suggested that a Clarificatory amendment be made to provide that tax on notional basis shall not be levied on the flats/premises held by real estate developers as stock in trade, in the course of their business. | The real estate developers construct flats in the course of their business and all of them do not get sold in one stroke or in one year.<br>They are thus required to hold, though they do not want to, till the time they eventually find buyers for the same;<br>Taxing on notional basis the real estate developers in respect of ALV of such unsold flats required to be held in the course of business; is not within the spirit and the intention of law to tax notional income on stock held in the ordinary course of business. |

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| | **purpose of any business carried on by the assessee.** | | | |
| **5.** | **Tax on Dividend** | It is proposed to insert a new section 115BBDA in the said Act so as to provide that any income by way of dividend declared, distributed or paid by a domestic company, in excess of ten lakh rupees shall be chargeable to tax at the rate of ten per cent. in the case of an individual, Hindu undivided family or a firm who is a resident in India. | Continuation of exemption without any condition | No tax should be imposed on Dividend in the hands of the recipient. Because it will amount to triple taxation. Once when the company pays tax on its profits, second when it distributes profits, third now proposed in the hands of the recipient. |