

India Budget **2012-13**

A Tax Update

Proposals in Detail



**Gearing up to manage the
taxing times...**

ACCRETIVE SDU

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DIRECT TAXES PROPOSALS

CORPORATE TAX

Rates of Tax

There are no changes in the tax rates for corporates.

Applicability of Tax

Indirect transfers of assets in India to be taxable:

As per the existing provisions, any income arising through transfer of a capital asset in India is taxable in India. This led to the controversy on the taxation of indirect transfers of commercial interests in India through the transfer of shares/interests in overseas companies having commercial interests in India. In this regard the Supreme Court ruled that such transactions would not trigger a tax in India since the provisions did not encompass indirect transfers.

Negates Supreme Court's decision in Vodafone's case. No guidance on what constitutes substantial value!!! Tax uncertainty persists

On account of the judicial pronouncements, the Finance Minister believes there is a need to clarify the scope and applicability of the taxing provisions under the law. In this regard, the Honorable Finance Minister has now clarified, with effect from 01.04.1962, that the provisions always envisaged levying tax on indirect transfers. In this regard the meanings of the terms 'through', 'property' and 'transfer' have been clarified.

In light of the amendment, a validation clause is introduced to state that the demand raised in relation to taxation of such income shall be valid even if the notice is issued before April 2012. Further, this validation shall be operative irrespective of the judgments pronounced by any court or Tribunal or any Authority.

Royalty term encompasses all forms of software transactions and use of communication links:

The law provides that any income payable by way of royalty in respect of any right, property or information is taxable in India on the ground that it is deemed to accrue or arise in India. The term “royalty” has been defined to mean consideration received or receivable for transfer of all or any rights in respect of certain rights, property or information. It is now clarified that the legislature, with effect from 01.06.1976, intended to encompass as royalties:

- Transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a license) irrespective of the medium through which such right is transferred.

- Royalty includes and has always included consideration in respect of any right, property or information, whether or not—
 - a) the possession or control of such right, property or information is with the payer;
 - b) such right, property or information is used directly by the payer;
 - c) the location of such right, property or information is in India.
- The expression “process” includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

Tax Relief

Power Sector:

- The law provides for an additional allowance of initial depreciation at the rate of 20% of the actual cost on new machinery or plant in the year of acquisition or installation. This benefit has now been extended to taxpayers engaged in power generation or generation and distribution.
- The benefit of tax holiday to a power sector unit that undertakes substantial renovation and modernization of the existing network of transmission or distribution lines has been extended till 31.03.2013.

Weighted Deduction on Specified expenditures:

- The benefit of weighted deduction of 200% of expenditure incurred on scientific research on in-house research and development facility has been extended till 31.03.2017 from 31.03.2012.
- It has been proposed to provide weighted deduction of 150% on any expenditure incurred on agricultural extension projects and any skill development projects, notified by the Board.

Dividend and Dividend Distribution Tax:

- Presently, dividend received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) is taxable at a reduced rate of 15% (plus applicable surcharge and cess), on a gross basis. The benefit is now proposed to be extended till 31.03.2013.
- Cascading effect of dividend distribution tax (DDT) in multi-tier corporate structures has been abolished with effect from 01.07.2012.

As per the existing provisions, dividend declared/distributed/paid by the domestic company is liable for Dividend Distribution Tax (DDT) at the rate of 15%. The amount of dividend is reduced by the amount of dividend, if any, received from its subsidiary and net amount is subject to DDT. However, such benefit is not applicable in case the company receiving dividend is itself a subsidiary of another domestic company. This single-tier exemption would lead to cascading effect of DDT in case of multi-tier corporate structure.

The Bill now proposes to liberalize the present single-tier exemption by providing that, if a company receives any dividend from a subsidiary and that subsidiary has already paid DDT on such dividend, then dividend distributed by the holding company shall not be liable for DDT.

Special Benefits to Specified Businesses:

- Under the existing provisions, investment-linked tax incentive is provided by allowing 100% deduction of capital expenditure incurred for the purpose of specified business in the first year of operations. In addition to the existing eight businesses, the following activities have been proposed to be added to the list of specified business:
 - setting up and operating an inland container depot or a container freight station.
 - bee – keeping and production of honey and bee wax.
 - setting up and operating a warehousing facility for storage of sugar.

- The deduction for capital expenditure has been enhanced to 150 % from the existing 100%, in case of the following specified business:
 - setting up and operating a cold chain facility;
 - setting up and operating a warehousing facility for storage of agricultural produce;
 - building and operating a hospital with at least 100 beds;
 - developing and building a housing project under a specified scheme;
 - production of fertilizer in India.
- Presently, 100% deduction for capital expenditure is allowable to taxpayer engaged in building and operating a hotel. Now it is proposed that the hotel owner will be considered to have been carrying on specified business, even if it transfers the operation of such hotel to another person. The amendment will be effective retrospectively from financial year 2010-11

Venture Capital Company / Fund:

- The exemption for Venture Capital Companies / Funds (VCF) was available only for income arising on account of investments in undertaking operating in nine specified sectors. It is now proposed to extend the benefit to investments in all venture capital undertakings.

However as a measure of rationalization and to align with the pass-through status, the income arising to the VCF shall be taxable in the hands of the investors on an accrual basis. Hitherto the same was taxable in the hands of the investors on receipt basis. Further, the income paid to investors of a VCC / VCF would be subject to withholding taxes.

Rationalization of provisions of Merger:

Under the existing regime, in order for a merger to qualify as a tax free merger, it is required that shares have to be issued by the resulting entity (parent company) to the shareholders of the merging entity (subsidiary company). It is now proposed that if the shareholder of the merging entity is also the resulting entity, then the requirement in relation to the issuance of shares will no longer exist. This amendment removes the ambiguity in the earlier provisions in case of mergers into a parent company, since a company cannot technically issue shares to itself. Similar amendment is proposed in case of demergers.

Encouragement of investment in Infrastructure Sector:

In order to draw long term, low cost funds from abroad for the infrastructure sector, it is proposed that any interest paid by specified companies (e.g. engaged in the construction of dams, ports, roads, ships, housing projects, etc) to a non-resident in respect of borrowing made in foreign currency from sources outside India between 01.07.2012 to 01.07.2015, under an approved agreement, shall be subject to lower rate of tax of 5% (plus applicable surcharge and cess).

Widening of Tax Base

- The share premium received by closely held companies from resident persons, to the extent higher than the fair market value of shares shall now be liable to tax. The proposal would not apply to venture capital investments.
- In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure etc at higher rate of 30% (plus applicable surcharge and cess). Further, no deduction for expenditure or allowance on such income shall be allowed.

General Anti-avoidance Rule (GAAR)

- GAAR is a broad set of provisions that could have the effect of invalidating an arrangement that has been entered into by a taxpayer, with the main objective of obtaining a tax benefit. The Tax Authority, under specified circumstances, is granted the power to adjust the taxpayer's assessment so as to counteract the attendant tax advantage.
- The provisions would apply in cases where an arrangement is declared as an Impermissible Avoidance Arrangement (IAA).

These provisions have been introduced to address aggressive tax planning and codify the doctrine of "Substance over form"
- An IAA means an arrangement, the main purpose of which is to obtain a tax benefit and it:
 - *creates rights, or obligations*, which are not ordinarily created between persons dealing at arm's length;

- results in direct or indirect *misuse or abuse* of provisions of the Act;
- lacks or is deemed to lack *commercial substance*;
- Is a manner of entering into or carrying out any act which is not ordinarily employed for *bona fide* purposes

Lack of commercial substance shall include arrangements involving round trip financing, induction of accommodating party, inconsistency in substance of the part and the arrangement as a whole, transactions disguising the value, location, source, ownership or control of funds which is the subject matter of the transaction.

- Once an arrangement is declared to be an IAA then the consequences, *including denial of tax benefit or a benefit under a tax treaty*, is determined, keeping in view the circumstances of the case. These consequences could include the following:

- Disregarding, combining or re-characterizing the arrangement or accommodating party or disregard of corporate structure;
 - Deeming connected persons as one;
 - Reallocating or re-characterization of an accrual or receipt of a capital or revenue nature; or any expenditure, deduction, relief or rebate;
 - Treating the place of residence of any party or situs of an arrangement to be other than that mentioned in the arrangement.
- It should be noted that GAAR would apply, even in cases of cross-border transactions involving Double Taxation Avoidance Agreements (DTAA). GAAR would apply if the provisions under the Income-tax Act are not beneficial to the tax payer as compared to the DTAA.

- The procedures for invoking the GAAR provisions have also been proposed. Broadly on satisfaction of the conditions for invoking GAAR at the stage of assessment, the assessing officer can make a reference to the commissioner, who again can refer the matter to an Approval Panel, if he is not agreeable with tax payer. Where however, the taxpayer does not object, the commissioner shall *suo moto*, make determination about GAAR.

The Approval Panel will then determine whether the arrangement is IAA or not. The Assessing officer will determine the consequences of a positive determination only after the approval of the Commissioner.

The taxpayer can thereafter appeal to the Tribunal.

- The proposed law also provides that the CBDT shall prescribe a scheme for regulating the condition and manner of application of the GAAR mechanism.

Transfer Pricing

Applicability to Specified Domestic Transactions:

With the objective of providing a mechanism for determination of the fair market value of transactions, the scope of transfer pricing regulation has been extended to specified domestic transactions. The following domestic transactions would now need to comply with the arm's length principle:

- Any expenditure incurred by way of payments to related persons / entities;
- Intra-unit or inter-company transfers of goods and services involving claiming of tax reliefs [ref. to in Sections 80A, 80IA, 10AA of the Act];
- Any other prescribed transactions.

In case the aggregate value of the specified domestic transactions exceeds Rs 5 crores, the taxpayer will need to comply with the transfer pricing provisions pertaining to computation, maintenance of documentation and filing of an Accountant's report. The existing transfer pricing assessment, dispute resolutions, and penalty provisions would also apply to these transactions.

It should be noted that the provisions would not apply if the same has an effect of decreasing the taxable income or increasing the losses.

International transaction and Intangible property:

- The definition of international transaction has been clarified to include business restructuring (even if there is no bearing on income, profits, losses or assets at the time of the transaction or at any future date), purchase/sale/lease/use of tangible property or intangible property, capital financing, guarantees, inter-company receivables/payables etc.
- Further a comprehensive definition of intangible property has been introduced with retrospective effect from April 1, 2001. Intangible property would include:
 - marketing related intangible assets (e.g. trademarks, trade names, brand names or logos);
 - technology related intangible assets (e.g. process patents, patent applications, technical documentation etc.);
 - artistic related intangible assets;
 - data processing related intangible assets;

- engineering related intangible assets;
- customer related intangible assets (e.g. customer lists, customer contracts, customer relationship, open purchase orders, etc.);
- contract related intangible assets;
- human capital related intangible assets (e.g. trained and organized work force, employment agreements, union contracts, etc.);
- location related intangible assets (e.g. leasehold interest, mineral exploitation rights, easements, air rights, water rights, etc.);
- goodwill related intangible assets (e.g. institutional goodwill);
- methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists or technical data.

Range benefit restricted:

- Hitherto upto 01.10.2009, the taxpayer had an option to choose a price within a 5% variation from the arithmetic mean price. Now this option has been removed with retrospective effect from April 1, 2001. Consequentially the benefit of the 5% as a standard deduction will not be available to the taxpayer.

- The Finance Act, 2011 conferred on the Central Government to notify the percentage of allowable variation. Now, the proposed Bill provides that the range to be specified by the Government shall not exceed 3% of the international transactions.

Enhancement of Powers of TPO / DRP:

- The Finance Act, 2011 conferred power to the Transfer Pricing Officer (TPO) to take the cognizance of the international transaction observed by him during the course of the proceeding before him though the same was not referred to him by the assessing officer.

It is now proposed to confer further powers, with retrospective effect from 01.06.2002, to the Transfer Pricing Officer to compute arm's length price of such international transactions which are not reported by the tax payer, which the TPO observes during the proceedings.

- Powers of Dispute Resolution Panel enhanced: It is clarified, with retrospective effect from 01.04.2009, that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.
- Dispute Resolution Panel (DRP) direction not binding on the assessing officer: The Assessing Officer now has the right to file an Appeal before the Income Tax Appellate Tribunal (ITAT) against the direction of the DRP in respect of an objection filed on or after July 1, 2012. Hitherto, the direction issued by the DRP was binding on the Assessing Officer.

Advance Pricing Agreement:

- An Advance Pricing Agreement (APA) framework is proposed with effect from 01.07.2012.

The key highlights of the same are:

- The Central Board of Direct Taxes (CBDT), with the prior approval of the Central Government, may enter into APA with any person to determine the arm's length price to be determined in relation to international transaction;
- The determination of arm's length price of international transaction covered under APA shall be done independent of other computational provision of the transfer pricing regulations; With this the option to use any method other than one of the prescribed five methods may become available;
- The APA shall be valid for a period not exceeding five years;
- The APA shall not be binding if there is a change in law or facts having bearing on the agreement so entered;

- The APA may be declared void in case of the misrepresentation of fact or fraud;
- The Board shall prescribe the scheme specifying manner, form and procedure in respect of APA.

- In pursuance of the introduction of Advance Pricing Agreement, amendments have also been proposed in relation to furnishing of income tax return by the person covered under the APA. The important amendments are:

- The assessee is required to furnish modified return within three months from the end of the month in which APA is entered into for the previous year for which agreement was entered into;
- The assessing officer shall be required to process the return based on the terms of the advance pricing agreement.

Others:

- **Rationalisation of penalty provisions for furnishing Accountant's Report:** The penalties in relation to non-furnishing of an Accountant's report are proposed to be enhanced. It is proposed to levy a

penalty of 2% of the international transaction value in case of failure on the part of the taxpayer to report any transactions or maintaining / furnishing incorrect information or documents as required under transfer pricing regulations. Hitherto, the penalty for non-furnishing of an Accountant's report was limited to Rs 100,000. The amendment is proposed to come into effect from 01.07. 2012.

Further in cases where the accountant report is not furnished, the case will be deemed to be considered as one of income escaping assessment.

Select Cross-Border Measures

- In relation to terms used in a DTAA, but not defined either in the DTAA or the Act, it is now clarified that the same would have the meaning as notified. The notification shall deem to have effect from the date on which the said agreement came into force.
- In order to claim benefits under the DTAA, a non-resident taxpayer is now mandated to obtain a **tax residency certificate** from their Government, containing particulars as may be prescribed.

- With effect from FY 2011-12 a resident taxpayer having any asset or financial interest in an entity outside India or is a signatory to an account outside India, is required to file a return of income in a prescribed form.

The time limit for reopening assessments in such cases has been extended to 16 years vis-à-vis the existing time limit of 6 years.

Minimum Alternate Tax

- Rationalization of provisions related to Minimum Alternate Tax (MAT):
 - Certain companies like insurance, banking or electricity, are required to prepare their Profit and Loss Account in accordance with the provisions specified in their respective regulatory laws and not as per Schedule VI of the Companies Act. In such cases it is proposed that the basis for computing book profits for MAT shall be the Profit and Loss Account prepared in accordance with the provisions of their respective regulatory laws.

- Further, book profit for calculating MAT will also be increased by the revaluation reserve relating to retirement or disposal of the revalued assets, where such revaluation reserve is not credited to Profit and Loss account.
- It is proposed to introduce an Alternate Minimum Tax (AMT) on persons other than Limited Liability Partnerships (LLPs). Hitherto, only LLPs are subject to AMT at the rate of 18.5% (plus education cess) of the adjusted total income, if the regular income-tax payable is less than the AMT. The key highlights of the levy are:
 - AMT is extended to any person (other than a company) claiming deduction in respect of certain incomes under Part C to Chapter VI-A (except section 80P) or section 10AA (deduction in respect of profits of SEZ units).
 - The provision will not apply to an individual or HUF or association of persons or body of individuals or an artificial juridical person if the adjusted total income does not exceed Rs. 20 Lakhs.

- The Adjusted total income shall mean total income as increased by deductions under Chapter VI-A (other than section 80P) and deduction under Section 10AA (deduction in respect of profits of SEZ units).
- Consequential amendments have been made in provisions relating to the filing of reports, tax credit for AMT, self-assessment tax, interest payments, etc.

Withholding Taxes / Tax Deduction at Source

- The legislature clarifies, that with effect from 01.04.1962, the obligation to comply with withholding tax on payments to non-residents shall be deemed to have always applied and extended to all persons, resident or non-resident, whether or not the non-resident has:
 - a) a residence or place of business or business connection in India; or
 - b) any other presence in any manner whatsoever in India.

- Withholding tax introduced, with effect from 01.10.2012, in relation to payments to residents for transfer of immovable property (other than agricultural land). The prescribed rate of withholding tax is 1% of the consideration exceeding fifty lakh rupees in case the property is situated in specified urban area or twenty lakh rupees in any other case.

The tax would be deductible on the amount being higher of the valuation considered for stamp duty or the sale consideration for the property.

Registration of transfer document shall be subjected to furnishing of proof of deduction and payment of the withheld taxes.

It should be noted that the transferee need not obtain a tax deduction account number for complying with this provision. A simple one page challan is proposed to be prescribed containing details (including the PAN) of the transferor, transferee and the property.

The amendments hereinafter are proposed to be effective from 01.07.2012.

- The threshold limit for applicability of withholding tax on interest payment in respect of debentures issued to resident individuals or HUF by a public company is increased to Rs. 5,000 from Rs. 2,500.
- Withholding tax of 10% has been introduced on remuneration paid to directors not being in the nature of salary.
- Threshold limit for applicability of withholding tax on payments for compulsory acquisition of immovable property is enhanced to Rs. 2,00,000 as against the existing threshold of Rs. 1,00,000.
- Deductor of tax at source shall not to be considered as assessee in default, if the resident payee
 - has furnished his return of income under section 139;
 - has taken into account such sum for computing income in such return of income;

- has paid the tax due on the income declared by him in such return of income;
- a certificate in a prescribed format from an accountant is furnished to that effect.

However, interest shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Similar amendments have been proposed for tax collection at source (TCS).

- Sale of Minerals: i.e., Coal, Lignite, Iron ore subjected to tax collection at source at the rate of 1%.
- Sale of Bullion or Jewellery in cash subjected to tax collection at source at the rate of 1%, if the sale consideration exceeds two lakh rupees.

- It is proposed to levy a fee for delay in furnishing the TDS/TCS quarterly statement at the rate of Rs 200 per day for delay in furnishing the statement within prescribed time limit.

The maximum amount of such fee not to exceed the tax deducted or tax collected.

In addition to said fees, a penalty in range of Rs. 10,000 to Rs 1,00,000 may be levied for non-furnishing TDS/TCS statement as well as furnishing of incorrect information;

- In order to rationalize the provisions for processing the TDS statement, it is now proposed that the intimation issued by TDS officer is rectifiable/appealable. Further it is also provided that any demand raised in the intimation would be treated as a demand notice.
- In case of payments made to non-residents, other than companies or foreign companies, the confusion arises pertaining to the amount that shall be subject to tax deduction i.e., whether the amount is chargeable to tax, if yes, the proportion chargeable.

In this regard, it has been proposed to introduce a mechanism for determining the amount liable to tax. Board has been empowered to notify specified persons who shall make application in this regard and shall be liable to deduct tax as per the amount computed by the Board.

Tax Administrative Measures

- Threshold limit of turnover/gross receipts for tax audit requirements is proposed to be raised to Rs 100 lacs from the existing Rs 60 lacs in case of business and to Rs 25 lacs from Rs 15 lacs in case of profession.
- Currently, the due date for completion of tax audits is 30th September. The same is proposed to be changed to the due date for filing of return. Consequentially, for the companies which are required to furnish transfer pricing accountant reports, the due date for completion of tax audit shall be extended to 30th November from the existing due date of 30th September. This amendment is proposed to take effect from FY 2011-2012.
- Non-corporate tax payers to whom transfer pricing provisions apply, the due date for filing the transfer pricing certificate has been extended to 30th November. Hitherto, the due date was 30th September.
- The time limit for issuing a notice to an agent of the non-resident is extended to 6 years. The amendment is effective retrospectively from financial year 2011-12.
- Time limits for completion of assessments have been extended by three months.
- Under the existing provisions, in case of search the assessee is required to pay a penalty in addition to tax, computed at 10% on undisclosed income of the specified years. It is now proposed with effect from 01.07.2012 to amend the penal provisions as below.
 - In case undisclosed income is admitted during the course of search, penalty will be levied at the rate of 10%.
 - In case undisclosed income is not admitted, but disclosed in the return of income filed later, then penalty will be levied at the rate of 20%.
 - In all other cases, penalty will be at the rate ranging from 30% to 90%.

Others

- Under existing provisions, if the tax is to be deducted by the taxpayer and is not deducted or after deduction the same is not paid, the expenditure is not allowed as deduction. Now it has been proposed to allow the expenditure if the deductee has included the respective income in his return and paid taxes thereon and a certificate from an accountant is furnished in the prescribed form.
- Closely held companies, would now have the onus to explain the source of the funds in the hands of the resident shareholder (excluding venture capital investments). If the company does not offer any explanation or explanation offered is found not satisfactory to the Assessing officer, then such amount can be taxed as income of the company.
- The threshold limits for applicability of presumptive taxation, in the case of small business, has been increased from Rs 60 lacs to INR 100 lacs.
- The presumptive taxation shall not be applicable from FY 2010-11 for the following categories:
 - Professionals;
 - Person earning income in the nature of commission or brokerage;
 - Person carrying on agency business.
- As per the existing provision, any payment made to related parties being excessive or unreasonable having regard to the fair market value is disallowed. It has been proposed to amend the provision to provide that no disallowance will be made if such transaction is at arm's length price. Further scope of the term related parties is extended to include companies in which another related company has substantial interest.
- In the case of donations made to charitable institutions or certain funds (viz National defence fund, Prime Minister Relief Fund etc.) and for scientific research or rural development, the tax relief would be available for payments made in excess of Rs 10,000 only if the same is made in a mode other than cash.

PERSONAL TAXES

- Basic exemption limit for individuals and HUF, increased to Rs. 2,00,000. No special benefit in case of women taxpayers

Tax rates:

Income (Rs.)	Proposed Rates	Existing Rates
0-180,000	Nil	Nil
180,000-200,000	Nil	10%
200,000-500,000	10%	10%
500,000-800,000	20%	20%
800,000-1,000,000	20%	30%
1,000,000 and above	30%	30%

Note: Basic exemption limit for senior / super senior citizens continue to be the same as in the earlier year.

- It is now proposed to exempt income earned by way of interest from savings bank account upto Rs. 10,000.

- Sale of residential house property**

A new exemption is proposed in relation to capital gains arising on sale of a long term capital asset being residential property (including plot of land) by an individual or HUF, provided the same is re-invested in specified equity shares and subject satisfaction of conditions. Amongst others the key conditions include:

- The exemption is limited for sales done upto 31-03-2017.
- Relief is provided if the individual/HUF has subscribed in the equity shares of an eligible company in which he holds more than 50% equity shares or voting rights before filing his return of income.
- The company is a small or medium enterprise engaged in the business of manufacturing of an article or a thing.
- The funds so received are utilized by the company for the purchase of new plant and machinery.

- The income from non-resident, non-citizen, sportsmen or sports associations or institutions shall be taxable at 20% instead of the erstwhile rate of 10% (plus applicable surcharge and cess). Accordingly, the withholding tax rate has also been increased to 20% with effect from July 1, 2012. Further, non-resident entertainer (such as theatre, radio or television artists and musicians) shall also be covered under this section.
- HUF is also entitled to exemption on Capital gains earned on transfer of land used for agricultural purposes.
- Sale of Bullion or Jewellery in cash subjected to tax collection at source at the rate of 1%, if the sale consideration exceeds Rs. 2 Lakhs.
- Relief is withdrawn in case of life insurance policies made on or after 01.04.2012, wherein the premium paid on such policies exceeds 10% of the sum assured including bonus. The threshold earlier was 20%. Correspondingly, relief under Section 80C for the premium paid would also be limited only to 10% of the actual capital sum assured.
- An individual could claim a tax relief for payment made for preventive health check-up of self, spouse, dependent children or parents, up to Rs.5,000/- in aggregate. The payment can be made by any mode including cash. The threshold limit shall form part of overall limit prescribed for deduction under section 80D.
- Under the existing provisions, any gift received by an individual or Hindu Undivided Family (HUF) from relatives is not liable to tax. The term 'relative' has now been defined to include in case of HUF, any member thereof. Hitherto the definition referred to only relatives in case of individuals. The amendment is proposed to be effective retrospectively from 01.10.2009.
- The age threshold for senior citizens has been made uniform across the Act. The same is specified as 60 years as against 65 years provided earlier in select provisions.
- Senior citizen not having income from business exempted from paying Advance Tax.

OTHER TAXES

Wealth Tax

- Exemption of residential house allotted to employee

Under the Wealth Tax Act, specified assets are excluded from the definition of “wealth”. One of the specified assets is residential house allotted by a company to an employee or an officer or a whole time director if the gross annual salary of such employee or officer is less than Rs. 5,00,000. It is proposed to increase the existing salary limit to Rs. 10,00,000.

The budget proposals related to extension of time limit and rationalization of assessment proceedings in the Income-tax Act have also been introduced in wealth tax.

Securities Transaction Tax

The rate of Securities Transaction Tax has been reduced from 0.125% to 0.10%.

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INDIRECT TAX PROPOSALS

GOODS AND SERVICE TAX (GST)

- GST Network (GSTN) is approved by the Empowered Committee.
- GSTN is envisaged to become operational by August 2012.

FM - the Constitution Amendment Bill, a preparatory step in the implementation of Goods and Services Tax (GST) was introduced in Parliament in March 2011 and is before the Parliamentary Standing Committee. As we await recommendations of the Committee, drafting of model legislation for Centre and State GST in concert with States is under progress.

progress.

state GST in concert with states is under drafting of model legislation for Centre and await recommendations of the Committee, Parliamentary Standing Committee. As we

CENTRAL SALES TAX

The rate of CST remains unchanged at 2% when goods are sold against declaration in Form C.

SERVICE TAX

Negative list based taxation of services

- In a step towards moving into goods and service tax (GST) the Finance Bill has proposed to shift from the current scheme of taxation, viz., selective principle (positive list) to taxation based on **'negative list of services'**.

Under this scheme of taxation, all services other than those listed under the 'negative list' (17 services listed) would be liable to service tax.

At the outset, the expression 'service' is defined to mean 'any activity carried out by any person for another for consideration'. Further without prejudice to the generality of the definition, it would include certain specified activities, which are termed as 'declared services' and exclude, among others, such transactions which constitute a mere transfer of property in goods'.

FM - Service Tax law is complex and sometimes avoidably different from Central Excise. We need to bring the two as close as possible in the light of our eventual goal of transition to GST.

- **Declared services** broadly comprises of renting of immovable property, construction activities, IPR related activities, development of computer software, agreements to refrain from an act, transfer of right to use goods without transfer of possession, hire purchase transactions, works contracts and supply of food / drinks.
- The **'negative list'** broadly comprises of: Certain services provided by Government, local authorities, RBI, foreign diplomatic missions; trading in goods; undertaking processes which amount to manufacture; space selling for other than radio and TV; collection of tolls; betting; entertainment related activities; distribution of electricity; renting for residential purposes; burial related activities; and certain specified activities relating to education, financial transactions, transportation of passengers, transportation of goods and agriculture.

Rate of service tax

- Service tax rate has been increased from 10% to 12%. Consequently, the effective rate would be 12.36%.
- The rate of tax payable on Works Contracts under the Composition Scheme is increased to 4.8% (effective rate at 4.944%) from 4% (effective rate at 4.12%).
- Service tax on premium paid for life insurance is at 3% (effective rate at 3.09%) for the first year and at 1.50% (effective rate at 1.545%) for premium of the subsequent years.
- Consequent to enhancement in the base rate to 12%, the optional rate of service tax payable on activities relating to purchase or sale of foreign currency and money changing is enhanced by 20%. *(applicable on the total amount including the foreign currency)*

Situs of provision of services

The Central Government proposes to introduce a set of Rules called the Place of Provision of Services Rules, 2012. It follows that the essence of levy of service is consumption based. These Rules inter alia provide for:

- Identification of jurisdiction of consumption of services;
- Determination of the location of service provider or receiver;
- Determination of taxable territory.

The above would be relevant for determining the levy of service tax and grant of concessions / exemptions. Accordingly, while providing for the relevant exemptions and concessions, it would replace the existing Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

The draft set of these Rules have been published and released for public comments.

Payment of service tax

- To be paid on receipt of consideration:** The option of payment of service tax on the basis of receipt of consideration is restricted to individuals and partnership firms (incl. LLPs) only whose value of taxable service provided from all premises is less than or equal to Rs. 50 Lakhs in the previous financial year. Further, during the relevant financial year, where the value exceeds Rs. 50 lacs, the option to pay service tax on receipt of money is limited to the threshold amount. Accordingly, in respect of services over and above the said threshold, the provisions contained in Point of Taxation Rules would apply, i.e., on issue of invoice or receipt of consideration, whichever is earlier.

Hitherto, this option was available only to specified categories of service providers irrespective of the value of services provided, viz., *Architects, Interior Decorators, Chartered Accountants, Cost Accountants, Company Secretaries, Scientific or Technical Consultants, Legal Consultants and Consulting Engineers.*

By virtue of this amendment, payment of service tax based on receipt of money is extended to all partnership firms and individuals irrespective of the nature of service provided. Even in respect of the above mentioned categories of service providers, the eligibility to opt for payment of tax on the basis of receipt of consideration would be subject to the above threshold.

- Responsibility to pay service tax:** Primarily, either the service provider or the recipient of service is liable to service tax, based on the nature of service and transaction.

However, under the negative list based taxation, it is proposed that in respect of the following services, the liability of payment of service tax shall be jointly between the provider and the recipient of service.

Type of service	Proportion of tax to be paid by	
	Provider	Recipient
Services by an insurance agent	Nil	100%
Transport of goods by road (other than those specified)	Nil	100%

Type of service	Proportion of tax to be paid by	
	Provider	Recipient
Sponsorship by anybody corporate or partnership firm	Nil	100%
Services by an arbitral tribunal to any business entity	Nil	100%
Services by an individual advocate to a business entity	Nil	100%
Services by any government or local authority to any business entity	Nil	100%
Renting or hiring any motor vehicle designed to carry passengers*		
– IF CHARGED ON ABATED VALUE	Nil	100%
– IF CHARGED ON COMPLETE VALUE	60%	40%
Supply of manpower*	25%	75%
Works contract services*	50%	50%
Receipt of any service from a person located outside the taxable territory, subject to conditions	Nil	100%

* Where the service provider is an individual, HUF, proprietary firm or partnership firm, whether registered or not, including association of persons; and the recipient of service is any company formed or registered under the Companies Act, 1956 (1 of 1956) or a business entity registered as body corporate located in the taxable territory

- **Adjustment of excess payment of service tax:** Adjustment of excess amount of service tax paid may now be adjusted without any monetary limit, subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification. Hitherto, any such adjustment was allowed only upto Rs. 2 lakhs per month / quarter, as the case may be and provided that the service provider is not under the centralized registration scheme.

Export of services

- **Rate of exchange:** In respect of transactions which are denominated in foreign exchange but do not qualify as exports, the rate of exchange for remittance of service tax shall be the rate as notified under the Customs provisions for export of goods. Further, the rate shall be as applicable at the time when taxable service was provided.
- **Payment of service tax on export services:** It is provided that provisions relating to payment of service tax would not apply to services which qualify as export in terms of Rule 3(1) of Export of Services Rules, 2005 subject to the condition that payment is received within the period specified by RBI including the extended period which may be allowed by RBI. Accordingly, only in the event, the consideration is not received within the time limit specified by RBI, the transaction would be liable to service tax. This amendment is more clarificatory in nature.

Issue of invoice

- **Issue of Invoice:** The time limit for issuance of invoice by a service provider has been increased from 15 days to 30 days from the date of completion of taxable service or receipt of payment, whichever is earlier. However, in respect of banking and other financial services, the time limit is at 45 days. *It is understood that amendment is with a view to reconcile with the business practices of issuing monthly invoice.*

In circumstances where the service provider receives an amount in excess of the invoice amount (upto Rs. 1000), the service provider need not raise an invoice for such excess.
- **No penalty for non-issue of invoices:** Hitherto, non-issue of invoice was reckoned as an offence and penal proceedings could be initiated. However, it is now provided that mere non-issue of invoice shall not attract penalty unless payment of service tax is evaded knowingly. In such circumstances, prosecution proceedings may be invoked under the current provisions.

Valuation of services

- **Works Contract:** Under the negative list based taxation, in addition to the existing provisions relating to valuation in respect of works contracts, it is provided that if the value of works contract is not determined as per the existing provisions, the value may be determined as follows:
 - In case of original works, service tax shall be payable on 40% (hitherto, 33%) of the total amount charged for the contract. However, if the gross amount charged includes value of land in case of contracts involving construction of complex or building for sale and where consideration is received before issue of completion certificate¹, service tax shall be payable on 25% of the total amount charged;

¹In this regard, reference is made to Section 66E(8) in Notification No. 11/2012 dated 16.03.2012. However, it is inferred that it should be read as Section 66E(b) as Section 66E (8) does not exist.

- In case of other works contracts, including completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fitting, service tax shall be payable on 60% of the total amount charged.

For the above purposes, the total amount would mean gross amount plus the value of any goods and services supplied free of cost, under the same contract or any other contract. Where the value of the goods or services supplied free of cost is not ascertainable, the value shall be determined on the basis of available fair market value.

- **Value of taxable service involved in the supply of food and drinks in a restaurant or outdoor catering:** Under the negative list based taxation, the value of taxable service involved in supply of food or drinks for consumption in restaurant or as outdoor catering service either by itself or along with other services shall be as a % of total amount as specified below:

Type of service	Taxable Value	
	Proposed	Existing
At a restaurant	40%	30%
As an outdoor caterer	60%	50%

Total amount shall include the value of goods, excluding value added tax levied on goods or service; services supplied free of cost for use in relation to supply of food or any other article under the same contract. In case value of the goods or services supplied free of cost is not ascertainable, the value shall be determined on the basis of available fair market value

- **Inclusion in value of service:** Under the negative list based taxation, in addition to the existing provisions, the amount realized as demurrage or by any other name for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service, shall be includable.

- **Exclusion from the value of service:** Under the negative list based taxation, in addition to the existing provisions, the following shall be excluded from the value of service:
 - Interest on deposits and delayed payment of any consideration for the provision of services or sale of goods;
 - accidental damages due to unforeseen actions not relatable to the provision of service.

Exemptions

- **Travel by air:** Service tax for travel by air shall be at 40% of the value of taxable service on all sectors and classes subject to the condition that CENVAT credit on inputs or capital goods is not availed. Hitherto, the abetment was at 10% of the gross value of ticket or a maximum of Rs. 150 / Rs. 750 per journey (domestic and international journey in economy class, respectively).
- **Transport of goods by rail:** The exemption for transport of goods by rail currently available is extended till July 2012.

- With the introduction of taxation based on 'negative list', it is implied that all services other than those specified in the negative list would be liable to service tax. Accordingly, keeping in line with the specific exemptions currently granted to various services, the following services would remain exempt under the new scheme of taxation:

Services provided by specified persons:

- Specified services provided by **educational institutions**;
- Services by an entity registered under Section 12AA of the Income tax Act, 1961 **for charitable activities**
- Technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a **clinical research organisation** approved to conduct clinical trials by the DCGI;
- Service by an **unincorporated body** or an entity registered as a society to its own members by way of reimbursement of charges or share of contribution as notified;

- **Others:** Sub-broker or an authorised person to a stock broker; an authorised person to a member of a commodity exchange; a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund; a selling or marketing agent of lottery tickets to a distributor or a selling agent; a selling agent or a distributor of SIM cards or recharge coupon vouchers; a business facilitator or a business correspondent to a banking company or an insurance company in a rural area.

Services provided to specific persons:

- Services provided to the **United Nations or a specified international organizations**;
- Services provided to **the Government, a local authority** or an individual in relation to any purpose other than industry, business or commerce; or an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities and provided by service provider located in a non-taxable territory;
- Specified services provided to a **recognised sports body**;

- Services provided to the **Government or local authority** by way of erection, construction, maintenance, repair, alteration, renovation or restoration as notified;
- Services provided to **Government or local authority** - repair of ship, boat or vessel; effluents and sewerage treatment; waste collection or disposal; storage, treatment or testing of water for drinking; transport of water by pipeline or conduit for drinking.

Specific nature of services:

- Services by a person by way of **renting of precincts of a religious place** meant for general public or conduct of any religious ceremony;
- **Health care services** by a clinical establishment, an authorised medical practitioner or para-medics;
- Services by a **veterinary clinic** in relation to health care of animals or birds;
- Services provided by an individual (**advocate or a person represented on and as arbitral tribunals**) to any person other than a business entity;
- **Training or coaching** services in recreational activities relating to arts, culture or sports;

- **Sponsorship** of tournaments or championships as notified;
- **Erection, construction, maintenance** etc., of specified nature as notified;
- Transfer of **right to use copyrights** relating to original literary, dramatic, musical, artistic works or cinematograph films;
- Services by a performing artist in **folk or classical art forms** of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
- Services by way of **collecting or providing news** by an independent journalist, Press Trust of India or United News of India;
- Services by way of **renting of a hotel, inn, guest house, club, campsite or other commercial places** meant for residential or lodging purposes, having declared tariff of a room below Rs. 1000 per day / equivalent;
- **Serving of food or beverages** by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a licence to serve alcoholic beverages;

- **Transportation by rail or a vessel** from one port in India to another of notified goods;
- **Transport by road** of fruits, vegetables, eggs, milk, food grains or pulses, in a goods carriage;
- **Transport by road** where the gross amount charged on a consignment in a single goods carriage does not exceed Rs. 1,500 or for a single consignee in the goods carriage does not exceed Rs. 750;
- **Providing on hire** – of motor vehicles meant to carry more than 12 passengers to a state transport undertaking; or a goods carriage to a goods transport agency;
- **Transport of passengers**, with or without accompanied belongings, by air, embarking or terminating in specified airports;
- **Contract carriage** for the transportation of passengers, excluding tourism, conducted tour, charter or hire;
- Services by way of **motor vehicle parking** to general public excluding leasing of space to an entity for providing such parking facility;
- Services of **general insurance business** provided under notified schemes;
- Services provided by an **incubatee** up to a total business turnover of Rs. 50 lacs in a financial year subject to the conditions that the total business turnover had not exceeded fifty lakh rupees during the preceding financial year; and a period of three years has not lapsed from the date of entering into an agreement as an incubatee;
- Carrying out an **intermediate production** process as job work in relation to notified goods;
- Services by an organiser to any person in respect of a **business exhibition held outside India**;
- Services by way of making **telephone calls** from departmentally run public telephones; guaranteed public telephones operating only for local calls; or free telephone at airport and hospitals where no bills are being issued;
- Services by way of **slaughtering of bovine animals**.

Partial exemption / abatement: Further to the above, a partial exemption (PE) is provided for the following services, subject to conditions specified therein:

Type of service	PE
Financial leasing services including equipment leasing and hire purchase	90%
Transport of goods; passengers with or without belongings, by rail	70%
Supply of food / drink in any premises including hotel, convention center, club, pandal, shamiana or at any function	30%
Transport of passengers by air, with or without belongings	60%
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40%
Transport of goods by road by GTA	75%
Services provided in relation to chits	30%
Renting of any motor vehicle designed to carry passengers	60%
Transport of goods in a vessel from one port in India to another	50%
Package tours (all inclusive)	75%
Tour operator services limited to providing services solely of arranging or booking accommodation	90%
Other tour operator services	60%

Time of provision of services

- The **'date on which the payment is received'** for the purposes of point of taxation shall be the date on which entry is recorded in the books of accounts or is credited to the bank account, whichever is earlier.

Further, in circumstances where there is a change in effective rate of tax or when a service is taxed for the first time during the period between entry in books of accounts is made and its credit is given in the bank account, the date of payment shall be date of credit in the bank account subject to the following:

- The credit in bank account is after 4 working days from the date when there is change in effective rate of tax or new levy;
- The amount is credited through a banking instrument.

In this regard, the CBEC has in TRU Circular No. DOF No. 334/1/2012-TRU dated 16.03.2012 recommended as follows: *In case where advance money is already received, the amounts may be deposited within March 31, 2012 into the bank accounts to maintain payment of service tax at current rate of 10.3%. Any deposit subsequent to March 31, 2012 will be liable to 12.36%. Further, it is clarified that this would not affect transactions where tax is paid based on issue of invoices.*

- In case a service is taxed for the first time, no tax will be chargeable on services where payment is received before the new levy and invoice is raised within 14 days of the date of new levy. Hitherto, it provided that the invoice shall be raised within 14 days from the date of completion of service or receipt of consideration, whichever is earlier.
- In circumstances where, point of taxation cannot be determined due to non-availability of date of invoice or date of payment, it is proposed that the Central Excise officer shall determine the same based on the best of his judgment after giving the assessee an opportunity of being heard.

- In circumstances where the service provider receives an amount in excess of the invoice amount, the 'point of taxation' on such excess amounts received shall be the date on which the invoice is issued / to be issued. However, this would be applicable in cases where the money received is excess by upto Rs. 1,000. This has been done to address the problems faced by service providers in credit cards and telecommunication who normally receive minor excess payments from their customers.
- The meaning of the expression 'continuous supply of service' is amended to include recurrent nature of service for a period exceeding 3 months with an obligation for payment periodically or from time to time.

Further, in such circumstances, the date of completion of each event as specified in the contract shall be deemed to be date of completion of provision of service.

Others

- **Renting of immovable property services:** In the wake of the judgement by the Hon'ble Supreme Court that 50% of the service tax liability upto 30.09.2011 was to be paid in 3 equated installments, it is specifically provided that no penalty shall be imposed for non-payment of such service tax if amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.
- **Period of limitation:** The period of limitation in cases not involving fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions with intent to evade payment of service tax is increased to 18 months from 12 months (1 year).

- **Time limit for preferring appeals:** In respect of an appeal to be preferred before the Commissioner (Appeals), the time limit is reduced to 2 months from 3 months, from the date of the order. Further, the time limit to condone the delay in filing the appeal has been reduced to 1 month from 3 months.

Further, in respect of departmental appeals to be filed before the Tribunal, the time limit is increased to 4 months from the date of the order sought to be appealed against. However, where the appeal is to be preferred by the service provider, the time limit is retained at 3 months from the date of receipt of order.

- **Revision of orders:** In respect of any orders passed by the Commissioner Appeals the person aggrieved may make an application for revision of the same in lieu of preferring an appeal before the Tribunal.
- **Settlement Commission:** The provisions relating to Settlement Commission as applicable under the Central Excise laws are now made applicable to service tax.

- **Audit of records:** The Commissioner of Central Excise is empowered to direct any person liable to pay service tax to get his accounts audited by a Chartered Accountant, under the following certain circumstances:
 - Failure to declare or determine the value of a taxable service correctly;
 - Availled and utilized CENVAT credits which is not within the normal limits having regard to the nature of taxable service, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate;
 - Has a reason to believe existence of fraud, collusion, or any wilful misstatement or suppression of facts;
 - Operations are spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of the accounts from the registered premises falling under the jurisdiction of the said Commissioner.

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CENTRAL EXCISE

Rate of duty

- The peak rate of Central Excise Duty is increased to 12% (effective rate at 12.36%) from 10%.
- Central Excise Duty was introduced at 5% or 1% (with and without CENVAT benefit, respectively) on 130 consumer products vide Finance Act, 2011. These concessional rates of Central Excise Duty are increased to 6% and 2%, respectively (Effective rate at 6.18% / 2.06%).
- Branded textiles garments are subject to excise duty on Retail Sale Price less abatement as specified. The Central Excise Duty on the branded textiles garments is increased to 12% from 10% keeping in line with the peak rate of duties on other products. However, the abatement is increased to 70% from 55%. Accordingly, the effective rate is reduced to 3.71% from 4.64%.
- The rate of Excise Duty under the Medicinal and Toiletry Preparation (Excise Duties) Act, 1955 is also increased to 12% from 10%.

- The rate of cess on indigenous petroleum crude oil under the Oil Industry (Development) Act, 1974 is increased to Rs.4,500 from Rs.2,500 per metric tonne.

Changes in duty rates on certain specific goods:

Description	w.e.f. 17.03.2012	Upto 16.03.2012
LED Lamps	6%	10%
Aircraft Pneumatic Tyres	NIL	10%
Motor vehicles - Less than or equal to 4 meters	12%	10%
Other Motor Vehicles		
▪ <= 1500 CC	24%	22%
▪ > 1500 CC	27%	22%+15,000
Cement: Mini cement plants – per tonne	6%+120	10%
Cement: Others – per tonne	12%+120	10%+80
Cement: Other than cleared in packed form – per tonne	12%	10%
Cement clinker – per tonne	12%	10%+200
Insulin, Lamivudine, Ritonavir, Saquinavir, Zidovudine., Atazanavir	Nil	5%
Battery charger, PC connectivity cables, memory cards & hands free for mobile		
▪ Sold as parts	Nil	Nil
▪ Sold as spares	2%	1%

Description	w.e.f. 17.03.2012	Upto 16.03.2012
Jewellery of precious metal		
Branded *	1%	1%
Unbranded **	1%	Exempt
When sold from EOU to DTA	10%	5%
Refined Gold other than tola bars	3%	1.50%
Gold from copper smelting	3%	2%
Silver from copper smelting	4%	6%

* On 30% of transaction value subject to non-availment of CENVAT credit on input and input services.

** When manufactured from gold or silver on which the appropriate duty of customs or excise has been paid

Deemed manufacture

The following activities shall be deemed to be manufacture:

- **Cigarettes:** Packing or repacking in a unit container, labeling or relabeling of containers including the declaration or alteration of Retail Sale Price on it or adoption of any treatment to render cigarettes marketable.
- **Jewellery:** Process of affixing or embossing trade name or brand name on - articles of jewellery; articles of goldsmiths' or silversmiths' wares of precious metal; metal clad with precious metals.
- **Flat rolled products:** Process of oiling and pickling flat rolled products of iron or non-alloy steel, hot rolled, not clad, plated or coated.
- **Aluminum foils:** Process of cutting, slitting and printing of aluminum foils.
- **Lithium ion batteries:** Processes of matching, batching and charging or the making of battery packs.

Classification of goods

- **Printing any character, name, logo, motif or format on certain paper and paper products:** The products shall remain classified as paper and paper products as long as such products are intended to be used for further printing.
- **Man-made fibre** such as polyester staple fibre and polyester filament yarn manufactured from plastic and plastic waste including waste polyethylene terephthalate bottles shall be classified as textile material.
- The process of cutting or sawing or sizing or any other process, for converting of **stone blocks** into slabs or tiles shall amount to manufacture.

Administrative

Alignment with customs provisions:

The provisions relating to penalties and offences are aligned with the equivalent provisions contained in the Customs Act. The gist is as follows:

- Offences, except an offence punishable with imprisonment of three years or more shall be non-cognizable. Hitherto, all offences irrespective of period of imprisonment were considered as non-cognizable.
- Power to arrest is provided for offences punishable with imprisonment of three years or more, which are cognizable. Hitherto, the power to arrest was available upon having a reason to believe that any person is liable to punishment under the central excise law.

- All search and arrest exercises shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 unless otherwise provided under the Central Excise Provisions. However, the powers of the magistrate under said code are vested with the Commissioner of Central Excise for Central Excise purposes.
- In the case of offences punishable with a term of imprisonment of three years or more, bail shall not be granted by a Court or Magistrate without an opportunity being given to the Public Prosecutor to present his case. However, in the case of minors, infirm and women, the Magistrate may grant bail.
- The jurisdiction of police officers to initiate investigation of offences under the Central Excise Act is excluded unless authorized in this behalf by the Central Government by a special or general order.

Others:

- The **Central Government is empowered to amend any exemption notification with retrospective effect.** Further, a saving clause is provided to deal with situations which may arise due to retrospective amendment.
- In cases involving **evasion of Central Excise Duty in excess of Rs. 30 lacs**, the punishment may extend to imprisonment upto 7 years and with fine. Hitherto, the threshold for the said punishment was at Rs. 1 lac.
- **Exclusion of period of stay:** In computing the period of 1 year or 5 years, as the case may be, for issue of show cause notice, the period during which the service of notice is stayed by an order of a court or tribunal shall be excluded.

- **Reduction in penalty:** The benefit of reduced penalty of 25% is available only on payment of Central Excise Duty along with interest and penalty of 25% within 30 days from the date of communication of the order. Hitherto, the benefit was available where the duty along with interest was paid within 30 days. The payment of penalty was not applicable.
- **Quarterly returns to be filed:** The frequency of filing the return under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended. Returns shall now be required to be filed quarterly in lieu of monthly Return.

Job work

- **Branded garments and made-up articles:** In terms of the Finance Act, 2011, in respect of manufacture of goods by a job worker under a brand name, it shall be deemed that the brand name owner is the manufacturer of goods. Accordingly, the onus of payment of duty and compliances vest with the brand name owner and not the manufacturer. In this regard the following amendments are made:

- The exemption will now be available to goods returned or brought back to any of the registered premises of the same brand owner / manufacturer. Hitherto, the benefit of exemption was available only to those goods which are returned to the same factory. However, the exemption would be available only if the goods are returned or brought back within a maximum period of one year from the date of their initial clearance.
- The threshold limit for enabling clearance of goods for home consumption of upto 10% of the aggregate value of clearances in the preceding year is to be computed for each factory / registered premises separately. Further, in computing this limit, the value of goods brought to the factory for re-making, refining, re-conditioning or for any other reason and subsequently cleared shall be excluded.

- **Manufacture of jewellery:** Every person who gets articles of jewellery produced or manufactured on job-work shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with the procedural requirements, as if he is the manufacturer. The artisans or goldsmiths who manufacture jewellery for others on job-work need not obtain registration.

The benefit of SSI exemption would be available to manufacturers of jewellery. The aggregate value of clearances would be computed on the basis of tariff value, i.e., 30% of transaction value. For the year 2011-12, the exemption limit for the remaining part of the year (between 17.03.2012 and 31.03.2012) may be availed by manufacturers of unbranded jewellery who would come into the tax net afresh.

Others

- New units or units that have undertaken substantial expansion in the State of Jammu and Kashmir are exempted from Central Excise duty on manufacturer of certain specified goods for a period of 10 years. It is being amended retrospectively to clarify that the date of commercial production of the new unit or expanded capacity would be the date from which unit shall be eligible to claim exemption for a period of 10 years.

CENVAT CREDIT

Conditions to avail credit

- **Receipt of goods into the premises of service provider not mandatory:** The condition of receipt of inputs and capital goods into the premises of provider of output service for availment of credit is dispensed with. Consequently, the CENVAT credit on inputs and capital goods is available to the service provider on mere delivery of such inputs to the service provider irrespective of the place of delivery, subject to documentation.
- **CENVAT credit on services provided to SEZs:** In respect of any services provided to a developer of an SEZ / unit in an SEZ, the proportionate amount of CENVAT credit thereto may be availed and utilised against other dues. It would not be required to be reversed. While this amendment was made through Finance Act, 2011, the same is now made retrospective to enable availment of credit for the earlier period/s, viz., from 10.02.2006.
- **Reversal of CENVAT credit on capital goods:** In respect of any capital goods which are used and subsequently removed, as such or as waste / scrap, the higher of the following shall be paid:
 - the credit taken on the capital goods as reduced by the depreciation, as provided; or
 - duty leviable on the transaction valueHitherto, it was provided that excise duty is payable on the transaction value of the same.
- **Reversal of CENVAT credit on exempt goods or services:** Where CENVAT credits are availed on common inputs / services which are used for both, exempted and taxable / dutiable activities, CENVAT credit is liable to be reversed to an extent of 6% of the value of exempted goods or services. Hitherto, the reversal was prescribed at 5%.
- **Recovery of CENVAT credits wrongly utilized:** The provisions of CENVAT Credit Rules are amended to provide for recovery of CENVAT credit, which has been taken and utilized wrongly, along with interest. Hitherto, the recovery provisions were applicable even in respect of credits which were availed but not utilized.

Refund of CENVAT credit

The provisions of refund of CENVAT credit on export of goods / services are redefined for simplification. The conditions contained in the notification are also incorporated in the redefined Rules under the CENVAT Credit Rules. The following are the changes:

- The condition that manufacturer / service provider is unable to utilise for payment on domestic transactions is dispensed with.
- Refund of credits for export made prior to 01.04.2012 should be claimed within a period of one year from this date, viz., within 31.03.2013.
- 'Export services' shall mean all services where payment is received during the relevant period and the conditions laid down in the Export of Services Rules, 2005 is fulfilled. Further, in respect of transactions where money is received in advance, it is essential that the provision of services are completed within the relevant period.

- The amended provisions will be applicable only to exports made on or after the 01.04.2012. In other words, refund of CENVAT credit related to exports made upto 31.03.2012 shall be claimed under the existing CENVAT Credit Rules before 31.03.2013.

Distribution of credits

- **Input Service Distributor (ISD):** The following additional conditions are applicable for distribution of CENVAT credits:
 - Credit of service tax attributable to service used wholly in one unit shall be distributed only to that unit;
 - Credit of service tax attributable to service used in more than one unit shall be distributed pro-rata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units.

- Distribution of CENVAT credit by Large Taxpayer Unit is restricted for units availing exemption based on location in the State of J&K.
- **Transfer of SAD to another unit of manufacturer:** Special Additional Duty of Customs (SAD) paid on imported goods which are availed as CENVAT Credit by the manufacturers may be transferred to another registered premises of the same manufacturer if the same has remained unutilized at the end of each quarter. Hitherto, such transfer was not permitted consequent to which such amount would remain unutilized in one unit while duties are paid / payable in other units.

Others

- **Capital goods to include motor vehicles:** The definition of capital goods has been expanded for extending the benefit of CENVAT credit on specified motor vehicles and accessories with specific reference to manufacturers and service providers.

However, the benefit of CENVAT credit on the all motor vehicles shall be available to courier agencies, tour operators, rent-a-cab operators, cargo handling agents, commercial or industrial construction services, outdoor caterers and pandal or shamiana service providers.

CUSTOMS

Duty rates

The mean rate of basic customs duty remains unchanged at 10% on non-agricultural goods.

Changes in duty rates on certain specific goods:

Description	WEF 17.03.2012	Upto 16.03.2012
Agriculture/Agro Processing/Plantation Sector		
Specified coffee plantation and processing machinery	5%*	10%/7.5%
Coffee brewing and vending machines (commercial type)	5%*	10%
Parts for manufacture of coffee vending and brewing machines	2.5%	10%
Specified soluble fertilizers	5%	7.5%
Liquid fertilizers (excl. urea)	2.5%	5%
Automobiles		
Completely Built Units of large cars / MUV / SUV permitted for import without type approval	75%	60%
Metals		
Coating material for manufacture of electrical steel	5%**	10%
Flat rolled products (HR and CR) of non-alloy steel	7.5%	5%

Description	WEF 17.03.2012	Upto 16.03.2012
Precious Metals / Stones		
Standard gold and platinum bars	4%	2%
Non-standard gold	10%	5%
Gold ore/concentrate and dore bars for refining	2%	1%
Capital Goods / Infrastructure		
Capital goods, plant and eqpt imported for setting up or substantial expansion of iron ore pellet plants or iron ore beneficiation plants	2.5%	7.5%
Machinery and instruments for surveying and prospecting of mines	2.5%	10% & 5%
Railway safety (Train Protection and Warning System) equipment and railway track laying machines	7.5%	10%
Textiles		
Shuttleless looms, alongwith parts and components for their manufacture	Nil***	5%
Automatic silk-reeling and processing machinery and raw silk testing equipments	Nil***	5%
Second hand textile machinery	7.5%	
Wool waste and wool tops	5%	10% / 15%

Description	WEF 17.03.2012	Upto 16.03.2012
Health		
Iodine	2.5%	5%
Probiotics	5%	10%
Specified raw materials for the manufacture of syringes, needles, catheters, cannulae	2.5%**	10%
Parts and components for the manufacture of blood pressure monitors and blood glucose monitoring systems (Gluco-meters)	2.5%**	10%
Raw materials for manufacture of intermediates, parts and sub-parts of blades for rotors for wind energy generators.	5%	10%
Bicycles	30%	10%
Parts of bicycles	20%	10%

* Concessional duty would be available upto 31.03.2014.

** Subject to actual user condition.

*** The exemption would apply only to new machinery.

Exemptions

The **Basic Customs Duty** is wholly exempt on the following goods:

- Goods for initial setting up and substantial expansion of fertilizer projects (upto 31.03.2015);
- Natural gas / LNG imported for power generation by a power generation company;
- Specified goods for generation of nuclear power;
- Equipment imported for road construction projects awarded by Metropolitan Development Authorities;
- Tunnel boring machines for hydel and road projects extended for all infrastructure projects;
- Tunnel excavation and specified lining equipment.
- Coal mining projects;
- New and retreaded aircraft tyres;
- Parts of aircraft and testing equipment for maintenance and repair of aircraft imported by third-party MRO units;
- Additional parts for manufacture of hybrid vehicles;
- Specified goods for manufacture of coronary stents / coronary stent systems and artificial heart valves (subject to actual user condition);
- LCD and LED TV panels of 20 inches and above;
- Parts of memory cards.

Special Additional Duty of Customs levied at the rate of 4% in lieu of sales tax on domestic goods is exempt on the following:

- Parts and components required for use in high voltage power transmission project;
- Parts, components and accessories for the manufacture of mobile handset;
- Lithium ion automotive battery for manufacture of Lithium ion battery packs for supply to the manufacturers of hybrid and electric vehicle;
- Solar lanterns or solar lamps.

Administrative

- **Recovery of dues:** In respect of any duty credit scrips which was obtained by any person by means of willful misstatement or collusion or suppression of facts, appropriate provisions are now introduced to recover the same. Further, provisions relating to provisional attachment of property have been made applicable to such recoveries.
- **Electronic payment of duties:** It is proposed to introduce electronic payment of customs duty for the specified class or classes of importers. The class / classes of importers are yet to be notified.
- **Service of documents:** It is proposed that service of any order / decision / summons / notice by Commissioner through courier shall be reckoned as valid service.

Computation of Custom Duties

- **Education cess on CVD not payable:** The education cess of 3% on the CVD is exempted. Accordingly, the effective rate of CVD payable on imported goods would be the base rate of Central Excise duty.

Illustration:

Particulars		Proposed	Present
A	Assessable value	10,000	10,000
B	Basic customs duty (BCD) @ 10%	1,000	1,000
C	Value for CVD (A+B)	11,000	11,000
D	CVD @ 12%	1,320	1,320
E	EC and SHE Cess @ 3%	Nil	40
F	Value for Cess (B+D+E)	2,320	2,360
G	EC and SHE Cess @ 3%	70	71
H	Value for SAD	23,390	12,430
I	SAD @ 4%	496	497
Total Duty (B+D+E+G+I)		2,885	2,928

Note: Even under the present scheme, the CVD is reckoned at 12% for ease in comparison.

The computation in case of domestic clearances by EOUs would be as follows:

Particulars	WEF 17.03.2012		Upto 16.03.2012	
	Assessable value		10,000	
BCD	10%	1,000	10%	1,000
		11,000		11,000
CVD including cess	12%	1,320	10.30%	1,133
		12,320		12,133
SAD	Exempt	-	Exempt	-
		12,320		12,133
Total Duty		2,320		2,133
Cess on Customs	3%	70	3%	64
		14,710		14,330
Total Duty		2,390		2,197
Effective Rate		23.90%		21.97%

Note: In the light of certain Tribunal judgements, the third layer of education cess is not considered above.

Others

- “Customs airport” to include air freight station. Accordingly, CBEC is now empowered to appoint air freight stations for unloading of import cargo and loading of export cargo, as in the case of ICD’s.
- Increase in duty free allowance under Baggage Rules:

Description	WEF 17.03.2012	Upto 16.03.2012
Adult passengers of Indian Origin	Rs. 35,000	Rs. 25,000
Children upto 10 years	Rs. 15,000	Rs. 10,000

- The Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 is being amended to further liberalize and simplify the procedure. The important changes are as under:
 - **Eligibility Certificate** can be obtained for a period not exceeding a year instead of obtaining the same consignment wise or quarterly at present;

- **Permitting re-export of unused / rejected goods** imported at concessional duty subject to certain conditions;
- **Maintenance of separate accounts** for these rules should not be insisted upon as long as the records maintained by the importer contain the requisite information.

EFFECTIVE DATES

The **Direct Tax** proposals are effective for the financial year 2012-13 unless alternatively provided therein.

The effective dates for the **Indirect Tax** proposals are as follows:

Central Excise:

Particulars	Effective date
Changes in Duty rates	17.03.2012
CENVAT Credit Rules	01.04.2012
Central Excise Rules	01.04.2012
Amendments in CEA	Upon enactment of Finance Bill.
Notifications	17.03.2012
SSI Exemption for Jewellery	17.03.2012
Branded textile garments abatement	17.03.2012
Other Rules	17.03.2012

Service Tax:

Particulars	Effective Date
Taxation based on Negative List of Service and related notifications	Date to be notified
New Rate of tax at 12.36%	01.04.2012
Works Contract (Composition Scheme)	
Amendments to Service Tax Rules, 1994	
Amendments to POT Rules, 2011	
Abatement for Air Tickets	Date to be notified
Amendment to Service Tax Valuation provisions	
Service Tax Audit Provisions	Date of enactment of Finance Bill, 2012
Expansion of Period of Limitation	
Settlement Commission Provision	
Revision of Orders	
Time Limit for Appeals	

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