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ANALYSIS OF THE BUDGET 2012 – 2013

M. L. BHUWANIA & CO.
Chartered Accountants

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THE FINANCE BILL, 2012

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FOREWORD

The focus of this year's Budget is on domestic demand driven growth recovery, revival of high growth in private investment, addressing supply bottlenecks in the agriculture, energy and transport sectors, tackling problems of malnutrition, black money and corruption, while implementing decisions to improve delivery systems, governance and transparency. For 2012-13, the endeavour of the government is to restrict the expenditure of the central subsidies to 2% of the GDP and bring down the fiscal deficit to 5.1%. In an interaction with the Honourable Finance Minister (FM), economists were eager to know how the number of 5.1% was estimated because the general opinion was that the number is highly optimistic. Some even wanted to know the assumptions which were made while arriving at the 5.1% number, to which the FM diplomatically replied that it does not include assumptions based on 'Murphy's law'.

To strengthen the investment environment in the country, the Budget also proposes measures such as reaching a consensus on allowing FDI in multi-brand retail up to 51% and introducing the Advance Pricing Agreement (APA) in the Finance Bill 2012. In addition, to deepen the domestic capital market, reforms such as allowing QFI's to access the Indian corporate bond market, simplifying the process of issuing IPO's and introduction of the Rajiv Gandhi Equity Savings Scheme have been proposed.

The proposal which set eyes rolling and has started a fresh round of debate, not only in the India but across the globe, is explained in the Memorandum to the Budget as "*Certain judicial pronouncements have created doubts about the scope and purpose of sections 9 and 195. Further, there are certain issues in respect of income deemed to accrue or arise where there are conflicting decisions of various judicial authorities.*

Therefore, there is a need to provide clarificatory retrospective amendment to restate the legislative intent in respect of scope and applicability of section 9 and 195 and also to make other clarificatory amendments for providing certainty in law."

It will be an open challenge for the government to ensure that the above proposal, if passed, makes it eligible to claim the \$4.5 bn and once claimed, to collect it.

On other reforms, a part of our budget analysis published two years back can be used as a report card. Two years back, the FM had introduced the following reforms :

"The major changes include :

- 1. Good and Services Tax (GST)*
- 2. Direct Tax Code (DTC)*
- 3. Adoption of International Financial Reporting Standards (IFRS)*
- 4. RBI's announcement of issuing additional banking licences to private sector companies*
- 5. The mega thrust on Infrastructure, Power, micro-finance and SME's."*

As you are aware, the only reforms achieved, and that too partially, are the ones with respect to IFRS and the thrust on Infrastructure, Power, micro-finance and SME's. So that is a score of two out of five in two years. We would like to end by reproducing a line from our last year's analysis – "*One will have to wait and see which promises are fulfilled and which ones are made, "just to be broken"."*

Budget Highlights

- Basic Exemption limits for Individuals, HUF, AOP, BOI raised by Rs. 20,000 and for resident women by Rs. 10,000. 20% tax slab proposed to be raised for taxable income upto Rs. 10,00,000 from Rs. 8,00,000. No changes in Corporate tax rates
- Proposal to extend the levy of Alternate Minimum Tax to all persons, other than companies, claiming profit linked deductions.
- Proposal to allow individuals and HUF tax payers, a deduction of up to Rs. 10,000 for interest from savings bank accounts with a scheduled bank, Co-op banks and Post office saving bank account.
- Proposal to allow deduction of up to Rs. 5,000 for preventive health check-up, of family members, as part of the deduction u/s. 80D.
- Age for classifying as a senior citizen reduced from 65 years to 60 years for the purpose of section 80D, 80DDB and 197A.
- Senior citizens not having income from business, proposed to be exempted from payment of advance tax.
- Exemption to Venture Capital Funds of the income earned from investments in all sectors, which was previously available only for investments in nine sectors.
- Share premium in excess of Fair Market Value (FMV) will be treated as income for closely held companies and to explain source of funds of the shareholder.
- Payment on transfer of certain immovable property (not being agricultural land) will be subject to Tax Deduction at Source (TDS) at the rate of 1%.
- Purchase of Jewellery or Bullion in cash in excess of Rs. 2,00,000 will be liable for Tax Collection at Source (TCS) at the rate of 1% of the purchase price.
- Revaluation reserve relating to a retired / disposed off asset, to be added to Book Profit for purposes of MAT, if not credited to the Profit and Loss account.
- Taxation of dividends received from specified foreign companies (shareholding of 26% or more) at a lower tax rate of 15% continued up to 31st March, 2013.
- Cascading effect of Dividend Distribution Tax to be removed.
- Where payer fails to deduct TDS, but if the resident payee has paid tax in due course, the payer will not be held as an assessee in default. Expenditure to be allowed as deduction on the date of furnishing of return by the resident payee.
- If sale consideration on transfer of a capital asset is not ascertainable, then the FMV to be considered as the full value of consideration.
- Proposal to extend weighted deduction of 200% for R&D expenditure in an in-house facility for a further period of 5 years beyond 31st March, 2012.

- Investment linked deduction of capital expenditure for certain businesses proposed to be provided at the enhanced rate of 150% and new sectors to be added for the purposes of investment linked deduction at the rate of 100%.
- Proposal to extend the sunset, date for setting up power sector undertakings, by one year, for claiming 100% deduction of profits for 10 years.
- Any sum or property received by an HUF, from its members, will not be considered as income of the HUF.
- Turnover limit for compulsory tax audit of accounts and presumptive taxation of SMEs to be raised from Rs. 60 lakhs to Rs. 100 lakhs and for professionals from Rs. 15 lakhs to Rs 25 lakhs.
- Exemption from Capital Gains tax on sale of residential property, if sale consideration is used for subscription in equity of a manufacturing SME for purchase of new plant and machinery.
- Proposal to introduce General Anti Avoidance Rules (GAAR) to counter aggressive tax avoidance scheme. Advance Pricing Agreement provisions introduced under Transfer Pricing.
- Transfer Pricing regulations to apply to certain domestic transactions.
- Income deemed to accrue or arise to non-residents, directly or indirectly, though the transfer of a capital asset situated in India, to be taxed in India retrospectively from 1st April, 1962.
- Payments for Computer software and transmission by satellite, cable, optic fibre or any other such technology classified as “Royalty” retrospectively from 1st June, 1976.
- Withholding tax obligation on payment of income to non-residents clarified to be applicable to non-residents in all scenarios irrespective of no formal taxable presence in India.
- Compulsory filing of income tax return by every resident in relation to assets located outside India. Time limit for reopening assessments increased from 6 years to 16 years where income from assets located outside India, escaped assessment.
- Peak rate of Excise duty and Service Tax increased from 10% to 12%. Excise duty rates of 1% and 5% increased to 2% and 6% respectively. No changes in the peak rate of Customs Duty
- Taxation of services based on a negative list of services. Services to be exempted will be notified.
- Retrospective amendment to allow Cenvat credit where services are rendered to SEZ's.
- Inter-unit transfer of unutilised credit of ADC permitted to manufacturers.

THE FINANCE BILL, 2012

The following are the relevant amendments proposed by the Finance Bill, 2012 as introduced in the Lok Sabha on 16th March, 2012. Though the Bill is yet to be passed by both the Houses of Parliament, generally the proposed amendments are passed except with few changes.

ALL THE AMENDMENTS WOULD BE EFFECTIVE FROM **ASSESSMENT YEAR 2013-2014** UNLESS SPECIFICALLY MENTIONED OTHERWISE

INCOME TAX

1. Rates of Tax

- A. Basic Exemption Limit for Individuals below the age of 60 years has been increased to Rs. 200,000. Separate Category of Women eliminated. Upper limit of 20% tax slab raised from Rs. 8 lakh to Rs. 10 lakh. The tax rates and surcharge for firms & companies will continue to be the same as that specified for assessment year 2012-13.

For the Financial Year 2012-13 relevant to the assessment year 2013-14, "Education Cess on Income-tax" and "Secondary and Higher Education Cess on Income-tax" shall continue to be levied at the rate of 2% and 1% respectively, on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

(i) Rates of tax for Individuals, HUFs, AOPs and BOIs

For individuals, HUFs, AOPs and BOIs, the slab rates of tax on total income are as under:-

Total Income slabs	<u>Very Senior Citizens</u> (above 80 years of age)	<u>Senior Citizens</u> (60 – 80 years of age)	<u>Others</u> (below 60 years of age)
Upto Rs. 2,00,000	Nil	Nil	Nil
Rs. 2,00,001 to Rs. 2,50,000	Nil	Nil	10%
Rs. 2,50,001 to Rs. 5,00,000	Nil	10%	10%
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Above Rs. 10,00,000	30%	30%	30%

Similar to Assessment Year 2012-13, there will be no surcharge leviable in Assessment Year 2013-14 as well for the above Assessee.

Individual, HUFs, AOP, BOIs with Adjusted Total Income above Rs. 20 Lakhs will now be liable to pay Alternate Minimum Tax (AMT) u/s. 115JC @ 18.5% plus cess.

(ii) **Rates of tax for Co-operative Societies**

The rates for co-operative societies will continue to be the same as those specified for assessment year 2012-13 i.e. as per the slab rates as under:

Total Income slabs	Rate of Tax
Upto Rs. 10,000	10%
Rs. 10,000 to Rs. 20,000	20%
Above Rs. 20,000	30%

Co-operative Societies with Adjusted Total Income above Rs.20 Lakh will now be liable to pay Alternate Minimum Tax (AMT) u/s. 115JC @ 18.5% plus cess. No surcharge will be levied.

(iii) **Rate of tax for Firms and Limited Liability Partnerships (LLP)**

The rate will continue to be the same as that specified for the assessment year 2012-13 i.e. 30%. Firms and LLP's will be liable to pay Alternate Minimum Tax (AMT) u/s. 115JC @ 18.5% plus cess. No surcharge will be levied.

(iv) **Rate of tax for Local Authorities**

The rate will continue to be the same as that specified for the assessment year 2012-13 i.e. 30%. Local Authorities will now be liable to pay Alternate Minimum Tax (AMT) u/s. 115JC @ 18.5% plus cess. No surcharge will be levied.

(v) **Rate of tax for Companies**

The rate of tax and surcharge in the case of domestic companies will continue to be the same as that specified for the assessment year 2012-13 i.e. 30% plus Surcharge @ 5% on income above Rs. 1 crore and cess @ 3%.

(vi) **Rate of tax for Foreign Companies**

The rate of tax in the case of foreign companies will continue to be the same as that specified for the assessment year 2012-13 i.e. @ 50% on total income comprising royalties, technical fees etc in pursuance of the agreement with the Government or Indian Concern which is approved by the Central Government and @ 40% on the balance income. The surcharge @ 2% is to be levied where total income exceeds Rs. 1 crore.

B. **Minimum Alternate Tax (MAT)**

There is no change in the rate of tax for this item, which continues @ 18.5% plus surcharge @ 5% on income above Rs. 1 crore and cess @ 3%.

C. **Tax on Capital Gain**

There is no change in the rate of tax for this item.

D. Dividend Distribution Tax (DDT)

The rates for this item are the same as those specified for the assessment year 2012-13 at 15%, effective rate of 16.2225%.

E. Tax Deducted at Source (TDS) / Tax Collected at Source (TCS)

There are certain changes in the scope, threshold limit and the rate of TDS / TCS which are detailed in further paragraphs.

F. Securities Transaction Tax (STT)

It is proposed to reduce the STT with effect from 1st July, 2012 on the cash delivery segment from the existing 0.125% to 0.1%.

2. **Definition of “Capital Asset” – Section 2(14)**

“Capital Asset” is defined to mean any property of any kind held by an assessee, whether or not connected with his business or profession. There are certain exclusions to this definition in the section. It is now proposed to insert an explanation to section 2(14) to clarify that ‘property’ includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

This amendment will be effective retrospectively from 1st April, 1962.

3. **Definition of “Commissioner” – Section 2(16)**

Section 116 of the Income-tax Act lists various Income Tax Authorities. At clause (c) of this section, Directors of Income-tax or Commissioner of Income-tax or Commissioners of Income-tax (Appeals) have been listed as an Income Tax Authority. Under section 117(1) of the Act, the Central Government appoints such persons as Income Tax Authorities. The post of Commissioner under section 117 and the post of a Director of Income-tax is inter-changeable.

It is therefore proposed to amend the provisions of section 2 to include a Director of Income-tax appointed under sub-section (1) of section 117 within the definition of a Commissioner.

This amendment will take effect retrospectively from 1st April, 1988 and will accordingly apply to assessment year 1988-89 and subsequent assessment years.

4. **Definition of “Demerger” and Amalgamation of subsidiary with its holding company not to be regarded as Transfer – Sections 2(19AA), 47(vii)**

Section 47(vii) provides that transfer of shares by a shareholder in a scheme of amalgamation shall not be regarded as a transfer for the purposes of section 45. One of the conditions to avail an exemption under this clause is that the

shareholders of the amalgamating company are allotted shares in the amalgamated company. This condition can not be fulfilled where a subsidiary company is amalgamating with the holding company since the holding company (amalgamated company) cannot be allotted its own shares. The proposed amendment excludes the requirement of issue of shares where the amalgamated company itself is the shareholder.

On similar lines, an amendment is proposed to the definition of demerger under section 2(19AA) to provide that the allotment of shares on proportionate basis will not be required to classify as a “demerger”, where the resulting company itself is a shareholder of the demerged company.

5. **Definition of “Transfer” - Section 2(47)**

It is proposed to insert an Explanation 2 to section 2(47) to clarify that ‘transfer’ includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

6. **Income deemed to accrue or arise in India - Section 9**

- A. Section 9(1) creates a deeming fiction on income which shall be deemed to accrue or arise in India, through various sources listed in the section. It is now proposed to insert an Explanation 4 to section 9(1)(i) to clarify that the expression ‘through’ shall mean and include and shall be deemed to have always meant and included “by means of”, “in consequence of” or “by reason of”.
- B. It is also proposed to insert an Explanation 5 to section 9(1)(i) to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

These amendments will take effect retrospectively from 1st April, 1962 and will accordingly apply in relation to the assessment year 1962-63 and subsequent assessment years.

These amendments are proposed to overrule the decision of the Hon. Supreme Court in the case Vodafone International Holdings B.V. v/s. UOI (2012) 341 ITR 1 (SC).

- C. Section 9(1)(vi) creates a deeming fiction on royalty income from any right, property or information. It is proposed to insert an Explanation 4 to section

9(1)(vi) to clarify that the consideration for use or right to use a computer software is royalty by clarifying that 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.

The amendment is proposed to overrule the decision of the Hon. Delhi High Court in the case DIT v/s. Ericsson A. B. (2012) 66 DTR 1 (Del).

- D. It is also proposed to insert an Explanation 5 to clarify that 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 amendment is proposed to overrule the decision of the Hon. ITAT Mumbai in the case Standard Chartered Bank (2011) 61 DTR 370 (ITAT) (Mum).

- E. It is also proposed to insert an Explanation 6 to clarify that the term “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.

The amendment is proposed to overrule the decision of the Hon. Delhi High Court in the case Asia Satellite Telecommunication Co. Ltd. v/s. DIT (2011) 332 ITR 340 (Del).

These amendments will take effect retrospectively from 1st June, 1976 and will accordingly apply in relation to the assessment year 1977-78 and subsequent assessment years.

7. **Validation clause as per clause number 113 of the Finance Bill 2012.**

It is proposed to provide for validation of demands raised under the Income-tax Act in certain cases in respect of income accruing or arising, through or from transfer of a capital asset situated in India, in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of agreement or otherwise outside India. It is proposed to provide through this validation clause that any notice sent or purporting to have been sent, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause shall be deemed to have been validly made and such notice or levy of tax shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India.

The validating clause shall operate notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any Authority.

This validation shall take effect from the date of enactment of the Finance Act, 2012.

8. **Amount received on life insurance policies not included as Income and Deduction of premium paid on life insurance policies - Section 10(10D), 80(C)**

Amounts received from Life Insurance policies including the sum allocated as bonus were exempt from tax. Any amounts received from a life insurance policy issued, after 1st April 2003, was not exempt if the premium in any year exceeded 20% of the actual capital sum assured. It is now proposed that any amounts received from a life insurance policy issued, after 1st April 2012, will not be exempt if the premium in any year exceeds 10% of the actual capital sum assured.

It is proposed to introduce a new section 80(C)(3A) to provide the deduction under section 80(C) for premiums paid only on such policies as mentioned above. An explanation to section 80(C)(3A) is proposed to be inserted to define the term 'actual capital sum assured' as the minimum amount assured under the policy on the happening of the insured event during the policy period without considering any premium agreed to be returned or any benefit by way of bonus or otherwise to be received.

9. **Exemption to Charitable Organisations carrying on commercial activity - Sections 10(23C), 13(8), 143(3)**

Sections 11 and 12 exempt income of charitable trust or institution registered under section 12AA of the Act, if its income is applied for charitable purposes in India. Similarly, sections 10(23C)(iv) and 10(23C)(v) also provide exemption to approved charitable trusts, funds or institutions. The term "charitable purpose" is defined in Section 2(15) and the said definition was amended w.e.f. A.Y. 2009-10 to, provide that advancement of an object of general public utility will not be considered a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any services in relation to any trade, commerce or business, for a cess or fee or any other consideration and the receipts from such activities exceeds Rs. 25 lakhs.

By virtue of insertion of section 13(8) and a proviso to section 10(23C), it is now expressly provided, with retrospective effect from A.Y. 2009-10, that no exemption will be available in the previous year where the trust or institution carries on any commercial activity as mentioned above, having such receipts in excess of the limit of Rs. 25 lakhs. However, such excess in one year will not alter the very nature of the trust or institution and will not result in cancellation of registration or withdrawal of approval for exemption. As such the exemption

would be denied only for the year in which the trust or institution has breached the above limit of Rs. 25 lakhs.

Consequential amendment is proposed in section 143(3) to enable the Assessing Officer to disallow the exemption under section 10(23C) in the assessment year in which the above situation occurs.

10. **Provisions relating to Venture Capital Fund (VCF) or Venture Capital Company (VCC) - Sections 10(23FB), 115U**

Section 10(23FB) granted exemption in respect of income of a SEBI registered VCF/VCC. The exemption was available only if the investment by such VCC/VCF was in unlisted shares of a domestic company, i.e. a Venture Capital Undertaking (VCU) and the VCU was engaged in only nine specified businesses / sectors.

It is proposed to amend section 10(23FB) and section 115U to provide that -

- (i) A venture capital undertaking shall have same meaning as provided in relevant SEBI regulations and there would be no sectoral restrictions to claim the exemption.
- (ii) Income accruing to the VCF/ VCC shall be taxable in the hands of the investor on accrual basis with no deferral on the basis of receipt.
- (iii) The VCF / VCC will be liable to deduct TDS on the income accrued / paid to the Investor.

11. **Income of a Foreign Company from sale of crude oil to be exempt - Section 10(48)**

A new clause has been inserted with effect from 1st April 2012, which provides that any income received in India, in Indian Currency, by a foreign company on account of sale of crude oil to any person in India will be exempt from tax provided that -

- (i) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government;
- (ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and
- (iii) the foreign company is not engaged in any activity, other than receipt of such income, in India.

12. **Additional depreciation on new machinery @ 20% - Section 32(1)(ia)**

Section 32(1)(ia) provides additional depreciation (in addition to normal depreciation) at the rate of 20% on the actual cost on new machinery or plant (other than ships and aircraft) acquired and installed by the assessee, in the year of such acquisition and installation.

In order to encourage new investment in the sector, it is proposed to extend the benefit of additional depreciation @ 20% on new machinery acquired and installed, by an assessee, who is engaged in the business of generation or generation and distribution of power, in the year of such acquisition and installation.

13. **Extension of Sunset Clause in weighted deduction for scientific research and development - Section 35(2AB)**

Under the existing provisions of Section 35(2AB), a company is allowed weighted deduction of 200% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research or an approved in-house research and development facility.

In order to incentivise the corporate sector to continue to spend on in-house research, it is proposed to amend this section to extend the benefit of the weighted deduction for a further period of five years i.e. up to 31st March, 2017.

14. **Deduction in respect of expenditure on specified business - Section 35AD(1A), 35AD(5), 35AD(6A), 35AD(8)**

A. Deduction in respect of capital expenditure on specified business.

Under the existing provisions of section 35AD, 100% deduction is allowed in respect of the whole of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of a “specified business” during the previous year in which such expenditure is incurred.

It is proposed to include three new businesses as “specified business” for the purposes of the investment-linked deduction under section 35AD, on which 100% deduction, of the amount spent after 1st April 2012, will be allowed namely -

- (i) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962 (52 of 1962);
- (ii) bee-keeping and production of honey and beeswax; and
- (iii) setting up and operating a warehousing facility for storage of sugar.

Consequential amendment is proposed in Sec 35AD(8) to include the above business in the definition of “specified business”.

B. Weighted deduction on capital expenditure in specified business.

Increase in deduction from 100% to 150% of capital expenditure (excluding Expenditure on land or goodwill or financial instrument) in respect of the following existing specified businesses commencing its operation on or after 1st April, 2012.

- (i) setting up and operating a cold chain facility;
- (ii) setting up and operating a warehousing facility for storage of agricultural produce;
- (iii) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;
- (iv) developing and building a housing project under a scheme for affordable housing
- (v) production of fertilizer in India.

C. Clarification on deduction for expenditure incurred in building and operating a new hotel of two star category and above.

Currently, the investment-linked deduction under section 35AD is allowed to an assessee engaged in the business of building and operating a hotel whereby the deduction can only be granted to the owner of a hotel if he himself operates it.

It is now proposed that an assessee carrying on the business of building and operating a two star or above category hotel as classified by Central Government will continue to be eligible for deduction of 100% even if the assessee transfers the operations of such a hotel to another person while continuing to own the hotel.

15. **Weighted deduction for expenditure incurred on Agriculture extension projects – Section 35CCC**

Agricultural extension services play a critical role in enhancing the productivity in the agricultural sector. In order to incentivise the business entities to provide better and effective agriculture extensive services, it is proposed to insert a new section 35CCC in the Income-tax Act to allow weighted deduction of 150% of the expenditure incurred on agricultural extension project. The agricultural extension project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines.

16. **Weighted deduction for expenditure incurred for Skill Development – Section 35CCD**

In order to incentivise companies to invest on skill development projects in the manufacturing sector, it is proposed to insert a new section 35CCD in the Income-tax Act to provide weighted deduction of 150% of expenses (not being expenditure in the nature of cost of any land or building) incurred on skill development project. The skill development project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines.

17. **Disallowance of business expenditure on account of non-deduction of tax on payment to resident payee - Section 40(a)(ia)**

As per the existing provisions, if tax is not deducted at source on payment of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or after deduction, is not paid before the due date of filing of return, then such expenses are not allowable.

Where an assessee makes specified payments to a resident payee without deduction of tax then no disallowance of such expenditure will be made in the hands of the payer if the payee:

- (i) has furnished his return of income;
- (ii) has included such sum in his return of income;
- (iii) has paid tax due on the income declared

18. **Transfer Pricing Regulations to now apply to certain domestic transactions - Section 40A(2)(a), 80A(6), 80-IA(8), 80-IA(10), 92, 92BA, 92C, 92CA, 92D, 92E, 271(1), 271AA, 271G**

Specified domestic transactions have been brought under the purview of Transfer Pricing Regulations.

Specified domestic transactions, are defined under a new section 92BA, as follows:

- (i) Transactions with persons mentioned in section 40A(2)(b) i.e. related parties
- (ii) Transactions referred to in section 80A(6) i.e. transactions entered into by assessee claiming deduction under section 10A, 10AA, 10B or 10BA
- (iii) Transfer of goods or services referred to in section 80-IA(8)
- (iv) Any business transacted between the assessee and another person as referred to in section 80-IA(10)
- (v) Any transaction referred to in any other section under Chapter VI-A or section 10AA, to which provisions of section 80-IA(8) or 80-IA(10) apply
- (vi) Any other transactions as may be prescribed

The threshold limit for the applicability of transfer pricing provisions to specified domestic transaction is Rs. 5 crores. Existing provisions relating to determination of arm's length price will be applicable to the "Specified Domestic Transactions".

Specified Domestic Transactions described above will be subject to transfer pricing compliance requirements including documentation, certification, litigation and penalty provisions which are applicable to transfer pricing.

It is proposed to amend section 40A(2)(b) to include that a disallowance under this section cannot be made in respect of specified domestic transaction referred in section 92BA, if such transaction is at Arms Length Price as defined in clause (2) of Section 92F.

It is also proposed to include companies under the same group (i.e. have the same parent company) as related persons as defined in section 40A(2)(b).

Section 271G provides penalty at 2% of the value of transaction for failure to furnish information or document under section 92D which requires maintenance of certain information and documents in the prescribed proforma by the persons entering into an International Transaction. This penal provision will now apply to persons entering into specified domestic transactions for such failure.

19. **Increase in Threshold limit for Tax Audit and Due Date for furnishing the Tax Audit Report - Section 44AB**

It is proposed to increase the threshold limit of total sales, turnover or gross receipts, specified under section 44AB for getting the accounts audited as follows:

Person carrying on	Existing limit	Proposed limit
Business	Rs. 60 lakhs	Rs. 100 lakhs
Profession	Rs. 15 lakhs	Rs. 25 lakhs

Last year, it was amended that Assessee entering into international transactions can furnish their tax returns upto 30th November, but the due date for furnishing the Tax Audit report was not consequently revised. It is now proposed that the due date for furnishing the Tax Audit Report is being amended from 30th September to the due date of furnishing the return of income u/s. 139(1) i.e. 30th September or 30th November respectively. Though the Finance Bill does not mention that the amendment for furnishing the tax audit report is retrospective, the Memorandum explaining the budget clearly mentions that this amendment will take effect retrospectively from Assessment Year 2012-13.

20. **Computation of profits and gains of business on presumptive basis - Section 44AD**

The threshold limit for tax on presumptive basis at 8% of turnover, payable in respect of eligible business whose turnover does not exceed Rs. 60 lakhs is now increased to 100 lakhs. It is also clarified that computation of profits and gains of business on presumptive basis shall not be applicable to persons –

- (i) carrying on profession as defined in section 44AA(1)
- (ii) earning income in the nature of commission or brokerage
- (iii) carrying on any agency business.

The above amendment is applicable with effect from Assessment Year 2011-12.

21. **Cost of acquisition on conversion of sole proprietary concern or firm into a company - Section 49**

It is proposed to amend section 49 to specifically provide that cost of asset received by a company, on conversion of a sole proprietary concern or a firm into the company, which is not regarded as a transfer, will be the same as the cost of the assets in the hands of the proprietary concern or firm.

The above amendment is applicable retrospectively from 1st April, 1999.

22. **Fair Market Value to be full value of consideration in certain cases - Section 50D**

A new section 50D is proposed where in case of a transfer, the consideration for the transfer of a capital asset(s) is not attributable or determinable, then for the purpose of computing income chargeable to tax as gains, the fair market value of the asset shall be taken to be the full market value of consideration.

The amendment is proposed to overrule the decisions in the case CIT v/s. Mohanbhai Pamabhai (1973) 91 ITR 393 (Guj), affirmed by SC in (1987) 165 ITR 166 and the decision of AAR in the case of Dance Corporation 321 ITR 178.

23. **Capital gain exemption on sale of agricultural land by HUF - Section 54B**

Section 54B provides for exemption from capital gain tax when agricultural land which is otherwise a capital asset is sold and another agricultural land is purchased. There was a controversy as to whether this benefit is available to a HUF. It has now been specifically extended to sale of agricultural land by a HUF subject to the fulfillment of conditions in the section.

24. **Relief from long-term capital gain tax on transfer of residential property if invested in a SME – Section 54GB**

A new section 54GB provides for exemption from long term capital gain arising on sale of a residential property (house or plot of land) in the hands of individual or an HUF provided:

- (i) The net sale consideration is invested for subscription of equity shares of an eligible company (the company), before the due date of furnishing the return of income.
- (ii) The company utilizes the amount for purchase of new asset within one year from the date of subscription in equity shares
- (iii) Amount not utilised for purchase of new asset before the due date of furnishing return of income, is deposited in a specified bank account before the due date of filing of return by the Individual or HUF
- (iv) The shares in the company and the new asset acquired by the company cannot be transferred for a period of five years.

An Eligible Company is a company which is :

- (i) Incorporated in the financial year in which capital gains on transfer of residential property is earned or until the due date of filing of return;
- (ii) Engaged in the business of manufacture of an article or thing
- (iii) Assessee holds more than 50% of share capital or voting rights of the company after such subscription
- (iv) A small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006

A new asset means any new plant and machinery or plant; but does not include any machinery or plant installed in office premises or residential accommodation including guest house; any office appliances including computers or computer software; any vehicle; or any machinery or plant allowed as deduction in computing business income.

The benefit of above provisions shall be available in respect of residential property sold on or before 31st March, 2017.

25. **Reference to valuation officer – Section 55A**

Under the existing provision the AO can make a reference to the Departmental Valuation Officer (DVO) if he is of the opinion that the value of the property as claimed by the assessee in accordance with an estimate made by a registered valuer is “less than” its fair market value (FMV).

It is now proposed to amend section 55A to provide that, the AO can make a reference to the DVO if he is of the opinion that the value of the property as claimed by the assessee as per the estimate made by a registered valuer is “in variance” with its FMV.

This amendment will take effect from 1st July, 2012.

The amendment is proposed to overrule the decisions in case of Ms. Rubab M. Kazerani v/s. JCIT (2004) 91 ITD 429 (Mum) (TM).

26. **Receipt of property by HUF from its members not to be treated as income – Section 56(2)(vii)**

Under section 56(2)(vii) if an individual or HUF receives money, immovable property or certain movable property, the same is treated as income unless it is received from a specified relative. The clause (e) in clause (vii) of the explanation to sub-section (2) of 56 is substituted retrospectively from 1st October, 2009.

It is proposed that relative for the purpose of HUF shall be any member of the HUF. Accordingly, gift received by a HUF from its members will not be taxed as income. However gift received by an individual from any HUF will be taxable.

This amendment will have retrospective effect from 1st October, 2009.

27. **Share Premium in excess of Fair Market Value to be treated as Income - Section 56(2)(viib)**

It is proposed that if a company, not being a company in which the public are substantially interested, receives, from any resident, any consideration for issue of shares which exceeds the face value of such shares, then the difference between the aggregate consideration received and the fair market value of the shares shall be chargeable to income tax as “Income from other sources” in the hand of the company.

This provision shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund. This provision is not applicable with respect to shares issued to a Non-resident.

28. **Amount received by a company against issue of Share - Onus on the company to prove source of money invested by the shareholder - Section 68**

Section 68 provides for taxation of unexplained cash credits. The section now provides that in case of a closely held company if the amount credited is by way of share application money, share capital, share premium or any such amount by whatever name called, the explanation offered for the credit will not be considered to be satisfactory unless the company which received the sum offers explanation about the source of money in the hands of such shareholder (being a resident) or persons making payment towards issue of shares. In the event of failure to do so, the entire amount credited will be treated as Income in the hands of the company, except where it is received from a Venture Capital company / fund / undertaking.

The amendment is proposed to overrule the decision in the case CIT v/s. Lovely Exports (2008) 216 CTR 195 (SC).

29. **Amendments to various deductions under Chapter VI-A**

A. **Deduction of life insurance premium paid - Section 80C**

The deduction will be allowed only on those life insurance policies where the premium in any year does not exceed 10% of the actual capital sum assured.

B. **Amount spent on preventive health check up to be allowed as a deduction - Section 80D**

An amount of up to Rs. 5,000 spent on account of preventive health check up of self, spouse, dependent children, parents shall now be eligible for deduction under section 80D. The amount can be paid in cash also. However, the overall qualifying limits under the section remains unchanged.

C. **Deduction for amount spent on treatment of specified diseases - Section 80DDB**

In respect of treatment of Specified diseases, higher deduction of Rs. 60,000 is available where it is spent on a family member who is a Senior Citizen, who is 60 years of age or older, where previously it was 65 years of age or older.

D. **Donation paid in cash above Rs. 10,000 not eligible for deduction - Section 80G and 80GGA**

The deduction allowed under this section in respect of donations, will not be available if the amount of donation exceeding Rs. 10,000 is paid in cash. In other words all donations exceeding Rs. 10,000 should be paid by cheque or draft.

E. **Deduction of interest received from a saving bank account – Section 80TTA**

Deduction of Rs. 10,000 shall be allowed to an individual or HUF for interest on deposits (not being time deposits) in savings account with

- (i) a banking company
- (ii) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
- (iii) a post office

No deduction shall be allowed to an individual or HUF if such account is held by, or on behalf of, a firm, an association of persons or a body of individuals.

F. **Extension of sunset clause for claiming deduction from profits and gains – Section 80-IA(4)(iv)**

Under the existing provisions a deduction is allowed where the undertaking, as defined in the section, is setup before 31st March 2012.

It is proposed to amend the above provision to extend the terminal date for a further period of one year, i.e., up to 31st March, 2013.

30. **Amendments in various provision related to Transfer Pricing**

A. **Avoidance of Double Taxation Agreements- Section 90**

A new sub section (2A) has been inserted which says that the provisions of Chapter X-A i.e. General Anti Avoidance Rule (GAAR) of the Act shall apply to the assessee even if such provisions are not beneficial to him. Action taken under GAAR cannot be contested by taking benefit of the provision of DTAA.

A new sub section (4) has been inserted which says that for availing any benefit under a DTAA, it would now be necessary, though not sufficient, for a non-resident assessee to furnish a tax residency certificate (containing prescribed particulars) of his being a resident of that country, obtained by him from the government of that country.

B. **'Intangible Property' - Section 92B**

The present definition of 'international transaction' has been expanded by bringing in many more transactions through an explanation with retrospective effect from 1st April, 2002.

The main transactions that are covered now include purchase, sale, transfer or lease of various kinds of tangible and intangible properties, various modes of capital (debt) financing, guarantees, provision of services like R & D and marketing services, etc. and business restructuring or reorganisation transactions.

Business restructuring transactions include all transactions, whether having a bearing on profit or loss or not, at the time of the transaction or at any future

date. This has been done in light of recent judicial pronouncements which held that transfer pricing provisions cannot apply in a case where there is no impact on profit or loss or income.

The term 'intangible property' has also been clarified by including various types of intangible properties related to marketing, technology, artistic, data processing, engineering, customer, contract, human capital, location, goodwill, and any similar item which derives its value from intellectual content rather than physical attributes.

C. Change in the tolerance limit of 5% variation from ALP - Section 92C

Section 92C(2) currently provides that the variation between the arm's length price and transfer price to the extent of 5% of the transfer price can be ignored and the said transfer price shall be deemed to be the arm's length price. The said section has been amended with effect from 1st April 2013, whereby, the above mentioned variation between the arm's length price and actual transfer price has been reduced to 3% instead of 5%.

It has also been clarified by a retrospective amendment with effect from 1st April, 2002 that if the variation between ALP and the transfer price is more than +/- 5%, the benefit of 5% will not be available.

D. Examination of International Transaction not referred by the assessing officer - Section 92CA

A clause (2B) has been introduced which clarifies that Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction even though the particular transaction was not referred to him by the AO if;

- (i) the tax payer has not furnished the report under section 92E; and
- (ii) such transaction comes to the notice of TPO in the course of proceeding before him.

This amendment will be effective retrospectively from 1st June, 2002

It is proposed that the Assessing Officer is not empowered either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012.

E. Advance Pricing Agreement (APA) - Section 92CC, 92CD

A Taxpayer can now enter into an APA with the Tax department for appropriate transfer pricing methodology for future transactions with effect from 1st July 2012.

- (i) APA shall include determination of the arm's length price (ALP) or specify the manner in which ALP shall be determined.
- (ii) The APA shall be valid for maximum period of five years.
- (iii) The APA will be binding on the tax payer and tax department.
- (iv) The APA will not be binding if there is any change in law or facts having bearing on such APA.
- (v) If Government finds that the agreement has been obtained by fraud or misrepresentation of facts, then it can declare such agreements to be void ab initio.

F. Penalties

A penalty of Rs. 100,000 is prescribed for failure to furnish the transfer pricing report. There is no penalty for non-reporting of an international transaction in the report filed under section 92E or maintaining or furnishing of incorrect information or documents.

Therefore a penalty at the rate of 2% of the value of the international transaction is proposed, if the taxpayer

- (i) fails to keep and maintain prescribed information and documents or
- (ii) fails to report any international transaction or
- (iii) maintains or furnishes any incorrect information or documents.

This amendment will be effective from 1st July, 2012.

31. Introduction of General Anti-Avoidance Rules (GAAR) – Chapter X-A - Section 92 to 102

GAAR provisions are proposed to be introduced in the Income-tax Act. These new provisions apply notwithstanding anything contained in any other provision of the Act. Essentially, GAAR empowers the Tax Department to declare an “agreement” entered into by an assessee to be an Impermissible Avoidance Arrangement (IAA) and the consequence thereof could be denial of tax benefit either under the provision of the Act or under the DTAA.

- A. Arrangement can be declared as an ‘impermissible avoidance agreement’ if it satisfies at least one of the following:
 - (i) The arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length.
 - (ii) It results in misuse or abuse of provisions of tax laws.
 - (iii) It lacks commercial substance or is deemed to lack commercial substance.
 - (iv) It is carried out in a manner, which is normally not employed for bonafide purpose.
- B. An arrangement will be deemed to lack commercial substance if –
 - (i) substance of the arrangement as a whole is inconsistent or differs significantly from the forms of its individual steps or part; or
 - (ii) it involves or includes-
 - round trip financing;

- an accommodation party;
 - elements that have effect of offsetting or cancelling each other; or
 - a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of fund which is subject matter of such transaction
- (iii) it involves the location of an asset or of the place of residence of any party which would not have been so located for any substantial commercial purpose other than obtaining tax benefit for a party.

The onus is on the taxpayer to prove the main purpose of the arrangement is other than that of obtaining tax benefit.

C. Consequence, if the arrangement is held to be an impermissible avoidance agreement :

- (i) Disregarding, combining or recharacterising any step or a part of the arrangement
- (ii) Treating the arrangement void ab-initio for the purpose of taxation
- (iii) Disregarding or combining any party or parties to the arrangement
- (iv) Deeming any connected person as a party to the arrangement
- (v) Reallocating expenses and income between the parties to the arrangement
- (v) Deeming the place of residence of a party or the situs of an asset
- (vi) Considering or looking through the arrangement by disregarding any corporate structure
- (viii) Re-characterizing equity into debt, capital into revenue etc and vice-verca

An approving Panel is to be set up consisting of three members, of the rank of Commissioner and above, who will give rulings on GAAR. Provision of GAAR shall apply even if such provisions are not beneficial to the assessee.

32. **Tax incentive for funding of certain Infrastructure Sectors - Section 115A**

It is proposed to amend Section 115A of the Income Tax Act to provide that any interest paid by a specified company to a non-resident in respect of borrowing made in foreign currency from sources outside India between 1st July, 2012 and 1st July, 2015, under an agreement, including rate of the interest payable, approved by the Central Government, shall be taxable at the rate of 5% (plus applicable surcharge and cess).

The specified company shall be an Indian company engaged in the business of -

- (i) Construction of dam,
- (ii) Operation of Aircraft,
- (iii) Manufacture or production of fertilizers,
- (iv) Construction of port including inland port,
- (v) Construction of road, toll road or bridge;
- (vi) Generation, distribution of transmission of power
- (vii) Construction of ships in a shipyard; or
- (viii) Developing and building an affordable housing project as is presently referred to in section 35AD(8)(c)(vii).

With effect from 1st July, 2012 a new section 194LC is also inserted providing for TDS @5% (plus applicable surcharge and cess) in case such interest is credited or paid to a non-resident or a foreign company.

33. **Taxation of a non-resident entertainer, sports person etc. - Section 115BBA, 194E**

Section 115BBA has been amended to include income arising to a non-citizen, non-resident entertainer (such as theatre, radio or television artists and musicians) from performance in India which is taxable @ 20% of gross receipts. The rate of tax in case of non-citizen, non-resident sportsmen and non-resident sports association is also raised from 10% to 20% of the gross receipts.

With effect from 1st July, 2012 the rate of TDS in the corresponding section 194E has accordingly been increased to 20%.

34. **Lower rate of tax on dividends received from foreign companies - Section 115BBD**

Dividend received by residents from a foreign company (in which it has shareholding of 26% or more) will continue to be taxed @ 15% plus applicable surcharge and cess for Financial Year 2012-13.

35. **Taxation of cash credits, unexplained money, investments- Section 115BBE**

A new provision is inserted to provide that unexplained credits, money, investment, expenditure, etc. as referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D to be taxed at 30% (plus surcharge and applicable cess). Hence no benefit of basic exemption limit will be allowed to an Individual or HUF, while calculating tax on income under above section.

No deduction will be allowed in respect of any expenditure or allowance in computing deemed income under the said sections.

36. **Minimum Alternate Tax - Section 115JB**

A. It is also proposed that the book profit for the purpose of section 115JB shall be increased by the amount standing in the revaluation reserve relating to the revalued asset which has been retired or disposed off, if the same is not credited to the profit and loss account.

B. As per section 115JB, every company is required to prepare its accounts as per Schedule VI of the Companies Act, 1956 to calculate book profit.

However, as per the provisions of the Companies Act, 1956, certain companies, e.g. insurance, banking or electricity companies are allowed to prepare their profit and loss account in accordance with the provisions specified in their regulatory Acts.

In order to align the provisions of Income-tax Act with the Companies Act it is proposed that in case of a company to which Schedule VI of the Companies Act is not applicable, profit and loss account prepared in accordance with the provisions of part II of Schedule VI shall be taken as a basis for computing the book profit for MAT.

It is also proposed to omit the reference of Part III of the Schedule VI of the Companies Act, 1956 from section 115JB in view of omission of Part III in the revised Schedule VI under the Companies Act, 1956

The amendment is proposed to overrule the decisions in the case ITO v/s. Galaxy Saws P. Ltd. (2011) 132 ITD 236 (Mum).

37. **Alternate Minimum Tax (AMT) – Section 115JC**

AMT will be applicable on all persons, other than Companies as companies are covered by MAT under section 115JB. Where the regular income-tax payable for a previous year by a person (other than a Company) is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income at the rate of 18.5%.

The above provision shall not apply to Individual, HUFs, AOP, BOI's or an Artificial Judiciary person if the Adjusted Total Income does not exceed Rs.20 lakhs.

Also the excess of AMT paid over the regular income tax will be allowed to be carried forward for 10 assessment years from the relevant assessment year from which the credit becomes allowable.

Consequential amendments are also proposed to the provisions of section 140A relating to self-assessment, section 234A relating to interest for defaults in furnishing return of income, section 234B relating to interest for defaults in payment of advance tax and section 234C relating to interest for deferment of advance tax.

38. **Removal of the cascading effect of Dividend Distribution Tax (DDT) - Section 115O**

With a view to remove the cascading effect of DDT in multi-tier corporate structure, it is proposed to amend Section 115-O of the Act to provide that dividend liable for DDT in case of a holding company is reduced by an amount of

dividend received from its subsidiary if the subsidiary company has paid DDT on the same even if such holding company is a subsidiary of any other company.

This amendment will take effect from 1st July, 2012.

39. **Daily tonnage income of shipping company - Section 115 VG**

It is proposed to revise the rate of daily tonnage income under this scheme as under:

Qualifying ship having net tonnage	Existing amount of daily tonnage income	Proposed amount of daily tonnage income
Up to 1,000	Rs. 46 for each 100 tons	Rs. 70 for each 100 tons
exceeding 1,000 but not more than 10,000	Rs. 460 <i>plus</i> Rs. 35 for each 100 tons exceeding 1,000 tons	Rs. 700 <i>plus</i> Rs. 53 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 3,610 <i>plus</i> Rs. 28 for each 100 tons exceeding 10,000 tons	Rs. 5,470 <i>plus</i> Rs. 42 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 7,810 <i>plus</i> Rs. 19 for each 100 tons exceeding 25,000 tons	Rs. 11,770 <i>plus</i> Rs. 29 for each 100 tons exceeding 25,000 tons

40. **Compulsory filing of income tax return in relation to assets located outside India - Section 139**

- (i) It is proposed to amend that every resident person having any asset (including financial interest in any entity) located outside India or signing authority of any account located outside India has to furnish a return of income irrespective of whether he has taxable income or not during the year.
- (ii) Due date of filing return of income where the company has entered into international transactions was 30th November. It is now proposed that the due date of filing returns for all assesseees who have entered into international transactions and who are required to obtain a report under section 92E will be 30th November.

41. **Processing of return of income where scrutiny notice issued - Section 143**

Presently, every return is to be processed under section 143(1) irrespective whether the case has been selected for scrutiny or not and the refund, if any, is to be issued. It is now provided that in respect of a return being selected for scrutiny assessment u/s 143(2), it will not be necessary to process the return u/s 143(1)

This amendment will take effect from the 1st July, 2012.

42. **Reference to Commissioner in certain cases - Section 144BA as per provisions of GAAR**

A new section 144BA shall be inserted with effect from 1st April, 2013 as follows:

- (i) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement (IAA) and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.
- (ii) The Commissioner shall, on receipt of a reference, if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such an opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee
- (iii) If the assessee does not furnish any objection, the Commissioner shall issue such directions as it deems fit.
- (iv) In case the assessee objects, then, after hearing the assessee in the matter, if he is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel.
- (v) The Approving Panel, shall provide an opportunity of hearing to the assessee and the AO and thereafter, pass necessary order either declaring the arrangement as an IAA or otherwise.
- (vi) If the members of the Approving Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members within six months from the end of the month in which the reference was received from commissioner.
- (vii) Every direction, issued by the Approving Panel shall be binding on the Assessing Officer who shall complete the proceedings in accordance with such directions.
- (viii) The final order in case any consequence GAAR is determined, shall be passed by AO only after approval by commissioner and thereafter first appeal can be filed to the Appellate Tribunal.

43. **Completion of assessment in search cases referred to DRP - Section 144C**

Under the provisions of section 144C of the Income-tax Act where an eligible assessee files an objection against the draft assessment order before the Dispute Resolution Panel (DRP), then, the time limit for completion of assessments are as provided in section 144C notwithstanding anything in section 153.

A similar provision is proposed to be made where assessments are framed as a result of search and seizure to provide that for such assessments, time limit specified in section 144C will apply, notwithstanding anything in section 153B.

Income tax department can now file appeal against the orders passed by the Dispute Resolution Panel (DRP) to the Income tax Appellate Tribunal. Accordingly, consequential amendments are proposed to be made in the provisions of section 246A and 253 of the Income-tax Act.

DRP has power to enhance the variation. It is clarified that the powers of the DRP include the power to consider any matter arising out of the assessment proceedings relating to the draft assessment order whether such matter was raised by the assessee before DRP or not.

These amendments will be effective retrospectively from 1st October, 2009.

The amendment is proposed to overrule the decisions in the case Dredging International N.V. v/s. ADIT (2008) 48 SOT 130 (Bom).

44. **Reassessment of income in relation to any asset located outside India - Section 147**

Amendments are also proposed to be made in section 147 of the Income-tax Act to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.

It is further proposed to amend Section 147 of the Act, to provide that in all cases where it is found that an international transaction has not been reported either by non-filing of report or otherwise by not including such transaction in the report mentioned in section 92E then such non-reporting would be considered as a case of deemed escapement of income and such a case can be reopened under section 147 of the Act.

45. **Time limit for issuing notice in case of Reassessment of income – Section 149**

It is proposed to amend the provisions of section 149 so as to increase the time limit for issue of notice for reopening an assessment to 16 years from 6 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

It is also proposed in section 149, to extend time limit for issue of notice in case of a person who is treated as agent of a non-resident, the time limit presently prescribed of two years be extended to six years.

Corresponding amendments are also proposed to be made to the provisions of section 17 of the Wealth-tax Act.

These amendments will take effect from 1st July, 2012, these provisions being of procedural nature shall also be applicable for any assessment year beginning on or before 1st April, 2012.

46. **Extension of time limit for completion of assessment or reassessment where information is sought under a DTAA - Section 153 and 153B**

During the course of assessment proceedings, in the case of an assessee having income or assets outside India, information is being sought from the tax authorities situated outside India, while completing an assessment.

The time limit for completion of an assessment or reassessment has been provided in the provisions of section 153 and 153B of the Income-tax Act. These provisions were amended vide Finance Act, 2011 to exclude the time taken in obtaining information (from foreign tax authorities). Currently, this period of exclusion is limited to six months.

Foreign inquiries generally by nature take longer time for obtaining information. It is, therefore, proposed that this time limit of six months be extended to one year.

These amendments will take effect from 1st July, 2012.

47. **Extension of time limit for completion of assessment or reassessment**

At present the time limit for completion of assessment proceedings is 21 months or 33 months (in a case where a reference is made to Transfer Pricing Officer) the same is now extended as under:

Limitation of time

Section	Current time allowed	Proposed Period
143 (3)	21 months from the end of the relevant Assessment Year.	24 months applicable from assessment year 2010-11 onwards.
143 and 92CA	33 months from the end of the relevant Assessment Year.	36 months applicable from assessment year 2009-10 onwards.
148	9 months from the end of the F.Y. in which notice issued	12 months from the end of the F.Y. in which notice issued
148 and 92CA	21 months from the end of the F.Y. in which notice issued	24 months from the end of the F.Y. in which notice issued

250 or 254 or 263	9 months from the end of the F.Y. in which order received	12 months from the end of the F.Y. in which order is received
250 or 254 or 263, and 92CA	21 months from the end of the F.Y. in which order received	24 months from the end of the F.Y. in which order received

Consequential amendments have been made in the provisions of section 17A of the Wealth-tax Act for increasing the time limit by three months for completion of assessment/reassessment proceedings.

These amendments will take effect from 1st July, 2012.

48. **Notification of a class of search cases where compulsory reopening of past six years not required - Section 153A and 153C**

Currently where search is conducted or a requisition is made, it is mandatory to issue a notice for filing tax returns for 6 assessment years immediately preceding the assessment year relevant to the previous year of search.

Now the Central Government is empowered to notify cases in which the Assessing Officer shall not issue notice for initiation of proceedings for preceding 6 assessment years. This would result in initiating assessment proceedings only for the assessment year relevant to the previous year in which search or requisition has been made.

49. **Application to Assessing officer to determine the tax to be deducted at source - Section 195**

Explanation 2 has been inserted in section 195(1) to clarify that obligation to comply with sub-section (1) and to make deduction there under applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has:-

- (i) A residence or place of business or business connection in India; or
- (ii) Any other presence in any manner whatsoever in India.

This amendment shall take effect retrospectively from 1st April, 1962.

50. **Consequences of failure to deduct TDS - Section 201, 206C**

Under the existing provisions of Chapter XVII-B i.e with respect to TDS, a person is deemed to be an assessee in default under section 201(1) in respect of non-deduction of TDS.

It has been clarified that the payer who fails to deduct tax at source on payment of any sum to a resident payee shall not be deemed to be an assessee in default if such resident payee –

- (i) has furnished his return of income under section 139
- (ii) has taken into account such sum for computing income
- (iii) has paid the tax due on income declared by him in such return of income
- (iv) the payer should furnish a certificate to this effect as prescribed.

However the payer will be liable to interest on the amount of non/short deduction from the date on which tax was deductible to the date on which the payee discharge tax liability directly.

Similar amendment has been proposed in relation to Tax Collection at Source

51. **Extension of time limit for passing order - Section 201(3)**

The time limit for passing an order under section 201 of the Income-tax Act has been extended with retrospective effect from 1st April, 2010 from existing four years to six years from the end of relevant financial year.

52. **Intimation after processing of TDS statement- Section 200A**

Currently, after processing of TDS statement, intimation is generated specifying the amount payable or refundable. The intimation so generated is not subject to rectification under section 154 and is not deemed as notice of demand under section 156.

In order to reduce the compliance burden of the deductor and also to rationalise the provisions of Processing of TDS statement, it is proposed to provide that the intimation generated after processing of TDS statement shall be

- (i) subject to rectification under section 154;
- (ii) appealable under section 246A; and
- (iii) deemed as notice of demand under section 156.

These amendments will take effect from 1st July, 2012.

53. **Liability to pay advance tax in case of non-deduction of Tax- Section 209.**

Under the existing provision of section 209 of the Act, the amount of advance tax payable is computed by reducing the amount of tax which would be deductible during the financial year from income-tax on estimated income.

Hence it was held by courts that when a duty is cast on the payer to deducted and pay the tax at source, no interest u/s 243B / 234C can be levied on payee assessee for the payer's failure to deducted and pay TDS or TCS.

In order to make assessee liable for payment of interest, it is now proposed to amend the aforesaid section to provide that where a person has received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income.

The amendment is proposed to overrule the decisions in the case DIT v/s. NGC Network Asia LLC (2009) 222 CTR 85.

54. **Fee and penalty for delay in furnishing of TDS/TCS Statement and penalty for incorrect information in TDS/TCS Statement – Section 271H**

For delay in furnishing TDS/ TCS statements-

Particulars	Amount	Remark
Fees	Rs. 200 per day.	From the due date of furnishing the return till the date of furnishing the TDS statement.
Penalty	Minimum - Rs. 10,000 Maximum- Rs. 100,000	No penalty shall be levied for delay in furnishing TDS statement, if it is furnished within one year of the prescribed due date after payment of TDS, interest and late fee.

These amendments will take effect from 1st July, 2012.

55. **Changes in rate, threshold limit and scope of TDS with effect from 1st July, 2012 -**

Sec	Nature of payment	Applicable to	Existing Limit	Rate	Proposed Limit	Rate
193A	Interest on listed debentures	Individual and HUF	Rs. 2,500	10%	Rs. 5,000	10%
194E	Payment to sportsmen or sports association or entertainer	Non-resident	No Limit	10%	No Limit	20%
194J	Remuneration or fees or commission payable to director (not being in the nature of salary)	Individual			No Limit (However limit of Rs. 30,000 is to be taken into account.)	10%
194L	Payment of Compensation on compulsory acquisition of land	NA	Rs. 1,00,000	10%	Rs. 2,00,000	10%

56. **TDS on transfer of certain immovable properties (other than agricultural land) – Section 194LAA**

It is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land) shall deduct tax at the rate of 1% on such sum, if the consideration exceeds Rs. 50 lakhs in case the property is situated in a specified urban agglomeration and Rs. 25 lakhs for all other locations. To ensure the compliance with the new provision, it is provided that -

- (i) Registering officer will not register the agreement unless the TDS challan is enclosed.
- (ii) Transferee is not required to obtain TAN and there will only be a one page challan for payment of TDS.
- (iii) Transferor will get credit of TDS.

57. **Scope of TCS extended with effect from 1st July 2012 – Section 206C**

It is now proposed to bring cash sale of bullion and jewellery and trading of certain minerals under the provisions of Tax Collected at Source w. e. f 1st July, 2012. The Seller will be required to collect tax at source at the rate of 1% of the sale consideration from every buyer of bullion and jewellery if the sale consideration exceeds Rs. 200,000 and the sale is in cash. This would be irrespective of the fact whether the buyer is a manufacturer, trader or purchases is for personal use.

In case of sale of coal, lignite and iron ore, it is proposed that the seller will be required to collect tax at source at the rate of 1% from the buyer. However, no tax is required to be collected, if these minerals are utilized by the buyer for the purpose of manufacturing, processing or producing articles or things.

58. **Interest on recovery on refund granted earlier - Section 234D**

Effective 1st June, 2003, Section 234D provides for levy of simple interest at the rate of 0.5% for every month or part thereof on the excess amount of refund granted under section 143(1) if on regular assessment, it is found to be excessive. Interest is payable for the period starting from the date of refund to the date of regular assessment.

The Delhi High Court in DIT vs. Jacobs Civil Incorporated (2011) 330 ITR 578 held that this provision will apply from the A.Y 2004-05 and no interest is payable for the earlier assessment years. To overcome this decision, it is now provided that interest shall be payable on excess refund for any earlier assessment years if the proceeding is completed on or after 1st June, 2003. This amendment will apply retrospectively from 1st June, 2003.

The amendment is proposed to overrule the decisions in case of CIT v/s. Bajaj Hindustan Ltd. (Bom) and ITO v/s. Ekta Promoters Pvt. Ltd. (2008) 113 ITD 719 (Del) (SB).

59. **Related person for the purpose of making an application before Settlement Commission - Section 245C**

Currently, an application can be filed before the Settlement Commission under section 245C by a related person who has substantial interest of more than 20% of the voting power in a company or who is beneficially entitled to more than 20% of the profits of the business at any time during the previous year. Now it is provided that substantial interest should exist on the date of search and not at any time during the previous year.

This amendment will apply from 1st July, 2012.

60. **Fee for filing of applications before Authority for Advance Rulings (AAR) - Section 245Q**

It is proposed to amend the provisions of section 245Q so as to provide for increase in the fee for filing an application for advance ruling from Rs. 2,500 to Rs. 10, 000 or such fee as may be prescribed, whichever is higher.

This amendment will take effect from 1st day of July, 2012 and will accordingly apply to any application for advance ruling filed on or after the 1st July, 2012.

61. **Appealable Orders before Commissioner (Appeal) – Section 246A**

An appeal against the following orders can also be filed with effect from 1st July, 2012 before the Commissioner (Appeals) :

- (i) An order of assessment or reassessment passed under section 92CD(3) after furnishing the modified return based on the advance pricing agreement;
- (ii) Penalty order passed under section 271AAB where the search has been initiated;
- (iii) Appeal by tax deductor against the intimation passed under section 200A

62. **Penalty on undisclosed income found during Search – Section 271AAB**

	Section	Rate of Penalty	Conditions
Existing	271AAA	NIL	Where the assessee a. admits undisclosed income in the statement recorded during search, b. specifies and substantiates the manner in which such income has been derived and c. pays tax with interest in respect of such undisclosed income.
		10%	Where the above condition are not complied with.

Proposed w.e.f 1 st July 2012 (hence applicable to all search and seizure action taken after above date.)	271AAB	10%	Where the assessee a. admits the undisclosed income, b. specifies and substantiates the manner in which such income was derived, c. pays tax with interest on such income and d. declares such income in the return of income for the specified previous year
		20%	In the course of search the assessee does not admit the undisclosed income, but declares such income in the return of income for the specified previous year and pays tax with interest on such income
		30% to 90%	Case not covered in above two conditions.

Specified previous year will mean –

- (i) the year in which search is conducted and
- (ii) the year ended before the date of search, but date of furnishing return of income u/s 139(1) has not expired before the date of search and assessee has not filed his return of income before the date of search.

63. **Increased threshold limit for initiating prosecution and period of imprisonment - Section 276C, 276CC, 277, 277A and 278**

	Tax, interest or penalty evaded	Period of Imprisonment
Existing	Upto Rs. 1,00,000	Min - 3 Months / Max – 3 Years
	More than Rs. 1,00,000	Min - 6 Months / Max – 7 Years
Proposed	Upto 25,00,000	Min - 3 Months / Max – 2 Years
	More than Rs. 25,00,000	Min - 6 Months / Max – 7 Years

WEALTH TAX

1. **Exemption of residential house allotted to employee etc. of a company - Section 2**

Property	Existing	Proposed	Remark
Residential house property allotted by a company, to an employee, whose gross salary does not exceed.	Rs.5,00,000/-	Rs. 10,00,000/-	Exempt from levy of Wealth Tax.

CUSTOMS

Note:

- (a) “Customs Duty” means the customs duty levied under the Customs Act, 1962.
- (b) “CVD” means the Additional Duty of Customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975.
- (c) “SAD” means the Special Additional Duty of Customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975.

1. General

- A. Rate structure: There is no change in the peak rate of basic customs duty of 10% applicable to non-agricultural goods with few exceptions which are separately discussed.
- B. The portion of cesses leviable on the CVD portion of customs duty is being exempted so as to avoid computation of such cesses twice and also it will result in marginal reduction of the total customs duty.
- C. Baggage Allowance: The duty-free allowance under the Baggage Rules is being increased from Rs. 25,000 to Rs. 35,000 for adult passengers of Indian origin and from Rs. 12,000 to Rs. 15,000 for children upto 10 years of age.
- D. Brass scrap, wood in the rough, dredgers and equipments for setting up of solar thermal projects are being fully exempted from SAD.

2. Sector wise changes in custom duty

Details in respect of the sector wise important changes in custom duty can be read in the Sectoral Impact section on Page 52 of this analysis.

3. Amendments in the Customs Act, 1962

- A. Clause (1) of section 2 is being amended to include air freight stations in the definition of “customs airport”.
- B. Clause (aa) of Section 7 is being amended to include “air-freight stations”. These amendments would empower the Central Board of Excise and Customs to appoint air freight stations for unloading of import cargo and loading of export cargo as in the case of Inland Container Depots.
- C. The provisions of the Customs Act enable recovery of duty not-levied, or short-levied by reason of collusion, or willful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter. Certain cases have been detected relating to utilization of instruments, such as duty credit scrips, where the instrument was obtained by means of collusion or

wilful mis-statement or suppression of facts by the person to whom the instrument was issued or his agent or employee and not by the importer who utilized it.

A new section 28AAA is being inserted to provide for recovery of duties, from the person to whom the instrument was issued without prejudice to any action that may be taken against the importer.

- D. Section 28BA is being amended to make the provisions relating to provisional attachment of property applicable to the proposed Section 28AAA.
- E. Section 47 is being amended to insert a new proviso therein to provide that the Central Government may, by notification in the official gazette, specify the class or classes of importers who shall pay customs duty electronically.
- F. Section 104 is being amended to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under the Act (except an offence punishable with term of imprisonment of three years or more under section 135) shall be non-cognizable and bailable. It also provides that all offences punishable with a term of imprisonment of three years or more under section 135 shall be cognizable.
- G. Section 104A is being inserted to provide that to grant bail in respect of specified offences under customs Act only after providing an opportunity to the public prosecutor to present his case.
- H. Section 122 is being amended to enhance the monetary limits for adjudication of cases involving confiscation of goods and imposition of penalty from Rs. 200,000 to Rs. 500,000 for Deputy/ Assistant Commissioners and from Rs. 10,000 to Rs. 50,000 for Gazetted officer lower in rank to Assistant/ Deputy Commissioner.
- I. Section 138 deals with summary trial of offences. This section is being amended to exclude offences punishable with term of imprisonment of three years or more under section 135 since it is being proposed that such offences shall be cognizable.
- J. Section 153 is being amended to bring 'courier services' within its ambit for the purpose of serving any order/decision/summons/notice by the Commissioner.
- K. Exemption from additional duty is being provided retrospectively to "foreign going vessels" for the period from 1st March, 2011 to 16th March, 2012.

EXCISE DUTY

1. General

- A. The effective rate of excise duty of 10% on non-petroleum products is being increased to 12% with a few exceptions where exemptions/concessions have been given.
- B. Concessional rate of excise duty of 5% on non-petroleum products is being increased to 6%.
- C. The lower rate of 1% on non-petroleum products is being increased to 2%. However, precious metal jewellery, coal and fertilizers would remain at 1%.

2. Sector wise changes in Excise duty

Details in respect of the sector wise important changes in custom duty can be read in the Sectoral Impact section on Page 52 of this analysis.

3. Amendments in Central Excise Act, 1944

- A. Section 4 deals with the determination of value of excisable goods chargeable to duty on *ad valorem* basis. It is being amended to incorporate the definition of “inter-connected undertakings” contained in Monopolies and Restrictive Trade Practices Act, 1969 as the latter has been repealed.
- B. Section 9 provides that cases of evasion in which the duty leviable exceeds Rs. 100,000 shall be punishable with a term of imprisonment extending to seven years and with fine. The section is being amended to substitute this amount with Rs. 30,00,000.
- C. Section 9A is being amended to provide that all offences under the Act, except an offence punishable with imprisonment of three years or more under section 9, shall be non-cognizable.
- D. Section 11A is being amended to exclude the period of stay in computing the period of one year or five years, as the case may be, for issuance of show cause notice where service of notice is stayed by an order of a court or tribunal.
- E. Section 11AC provides for reduced penalty if the duty along with interest is paid within a 30 days of the communication of the order. It is being amended to make available the benefit of reduced penalty only if the reduced penalty is also paid within the specified period of thirty days.
- F. Section 13 dealing with the power to arrest is being substituted to align the provisions with Customs Act and also to provide that offences punishable with imprisonment of three years or more under section 9 shall be cognizable.

- G. Section 13A is being inserted to provide that bail in the case of offences punishable with a term of imprisonment of three years or more under section 9 shall not be granted by a Court or Magistrate without an opportunity being given to the Public Prosecutor to present his case. It also provides that in the case of minors, infirm and women the Magistrate may grant bail. It also excludes the jurisdiction of police officers to initiate investigation of offences under the Central Excise Act, unless authorized in this behalf by the Central Government by a special or general order.
- H. Section 18 is being substituted to provide that save as provided under the Central Excise Act, searches shall be carried out as per the procedure laid down in the Code of Criminal Procedure.
- I. Notification No.1/2010-CE dated 6th February, 2010 provides exemption from Central Excise duty to goods cleared from new units or units that have undertaken substantial expansion in the State of Jammu and Kashmir. It is being amended retrospectively from the date of issue of the said notification to provide that for units undertaking substantial expansion in terms of the notification, the exemption period of ten years would be computed from the date of commercial production from the expanded capacity. This would clarify the policy intent.
- J. The Third Schedule of the Central Excise Act relating to the deeming of certain processes as amounting to “manufacture” is being amended to include cigarettes. Accordingly, the 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 shall be processes amounting to manufacture.

4. **Amendment in Cenvat Credit Rules, 2004**

- A. Existing rule 5 to be replaced with a new rule to simplify the procedure for refund of unutilized credit on the account of exports;
- B. Credit is being allowed on motor vehicles (except those of heading nos. 8702, 8703, 8704, 8711 and their chassis). The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed;
- C. Credit of insurance and service station service is being allowed to ---
 - (i) insurance companies in respect of motor vehicles insured and re-insured by them; and
 - (ii) manufacturers in respect of motor vehicles manufactured by them.
- D. At present, credit on goods can be taken only after they are brought to the premises of the service provider. Rule 4(1) and 4(2) are being amended to allow a service provider to take credit of inputs or capital goods whenever the goods are delivered to him, subject to specified conditions.

- E. Rule 7 for input service distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.
- F. In case of removal of used capital goods as such or as waste or scrap, CENVAT credit shall be paid on the depreciated value of the goods (as prescribed) or the transaction value, whichever is greater.
Earlier, the CENVAT credit was payable on the depreciated value (as prescribed) of used capital goods. (This change will be effective from 17 March 2012).
- G. Refund of unutilised CENVAT credit on inputs/input services shall be available in the ratio of export turnover to Total Turnover and no relation between exports and the inputs/input services used in such exports will not be required.
- H. In cases where separate records are not maintained and proportionate CENVAT credit is not reversed, the amount payable on exempted goods or exempted services is proposed to be increased to 6% of the value of exempted goods or services.
- I. Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by the service receiver on reverse charge basis.
- J. The interest provision has been amended to provide that the interest is payable only if CENVAT credit is taken and utilised wrongly. Reversal of CENVAT credit wrongly taken, before utilization of the same will not attract interest. (This amendment will be effective from 17 March 2012).
- K. New Provisions introduced for transfer of unutilised CENVAT credit have been of Special Additional Duty by one unit of a manufacturer to its other units on a quarterly basis.
- L. Services provided to SEZ Units – Rule 6(6A) was inserted from 1-3-2011 to the effect that restriction under Rules 6(1), (2), (3) & (4) shall not be applicable in case the taxable services are provided without payment of service tax to a unit in a SEZ or to developer of a SEZ for their authorised operations.

SERVICE TAX

1. Rate of Service Tax

- A. The rate of service tax is being increased from 10% to 12%. Thus effective rate of Service Tax will be 12.36%.
- B. Consequent to change in the rate of service tax, changes are also being made in specific and compounding rates of tax for the following :
- (i) Service in relation to purchase and sale of foreign currency including money changing;
 - (ii) Service of promotion, marketing, organizing or in any manner assisting in organizing lottery;
 - (iii) Works contract service;
 - (iv) Reversal of cenvat credit under rule 6(3)(i).
- C. Life Insurance Service
Where the entire premium is not towards risk cover, the first year's premium shall be taxed at the rate of 3% (earlier it was 1.5%), while subsequent premium shall attract tax at the rate of 1.5%. Full cenvat credit is being availed.
- D. Air Travel Service
An *ad valorem* rate of 12% with abatement of 60% (Effective rate of Service Tax is 4.94%) will be charged instead of the dual rate structure of maximum service tax of Rs. 150 and Rs. 750 in case of economy class travel subject to the condition that no credit on inputs and capital goods is taken.

2. Paradigm Shift – Introduction of Negative List Approach

A. The Negative list approach in a nutshell

The services specified in the 'Negative List' (section 66D) shall remain outside the tax net. All other services (including Declared Services), except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax.

A Negative List approach to taxation of services is being introduced vide new sections, namely, 65B, 66B, 66C, 66D, 66E and 66F proposed in Chapter V of the Finance Act, 1994.

B. Definitions

Service - Section 65B(44)

“Service” is defined as any activity carried out by a person for another for consideration, and includes declared service but shall not include :

- (i) Sale or gift of goods or immovable property or transfer of title in goods or immovable property in any manner.

- (ii) Transaction in money or actionable claim;
- (iii) Services provided by employee to employer in the course of employment;
- (iv) Fees taken in any court or tribunal.

Further, no service tax is leviable on consideration received by the following persons for the functions/ duties performed as :

- (i) Members of parliament, members of State Legislature, members of Panchayats, Municipalities and of the other local authorities.
- (ii) Any person on any post under the Constitution.
- (iii) Any chairperson or a member or a director in a body established by the Central Government, State Government or Local authority and who is not a deemed employee before this provision coming into force.

It is further clarified that an unincorporated association or body of persons and member thereof are treated as distinct persons. Secondly, when a person has one establishment in Taxable territory and another establishment in a non taxable territory, both establishments are treated as establishment of distinct persons. Thirdly, a person carrying on a business through a branch or an agency or representational office in any territory shall be treated as having an establishment in that territory.

C. Determination of Place of provision of service - Section 66C

The Central Government has been empowered U/s. 66C to enact rules to determine when would the service be considered as provided in the taxable territory i.e rules to determine the place of provision of service. When the Place of Provision of Services Rules comes into effect, existing 'Export of Services Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006' will be rescinded.

D. Negative List of Services - Section 66D

The following services are excluded from the service tax levy

- (i) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
 - a. services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - b. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - c. transport of goods or passengers; or
 - d. support services, other than services covered under clauses (j) to above, provided to business entities;
- (ii) services by the Reserve Bank of India;
- (iii) services by a foreign diplomatic mission located in India;

- (iv) services relating to agriculture by way of—
 - a. agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - b. supply of farm labour;
 - c. processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - d. renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - e. loading, unloading, packing, storage or warehousing of agricultural produce;
 - f. agricultural extension services;
 - g. services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (v) trading of goods;
- (vi) any process amounting to manufacture or production of goods;
- (vii) selling of space or time slots for advertisements other than advertisements broadcast by radio or television.
- (viii) service by way of access to a road or a bridge on payment of toll charges;
- (ix) betting, gambling or lottery;
- (x) admission to entertainment events or access to amusement facilities;
- (xi) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (xii) services by way of—
 - a. pre-school education and education up to higher secondary school or equivalent;
 - b. education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - c. education as a part of an approved vocational education course;
- (xiii) services by way of renting of residential dwelling for use as residence;
- (xiv) services by way of —
 - a. extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

- b. *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (xv) service of transportation of passengers, with or without accompanied belongings, by—
 - a. a stage carriage;
 - b. railways in a class other than first class; or an airconditioned coach;
 - c. metro, monorail or tramway;
 - d. inland waterways;
 - e. public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and
 - f. metered cabs, radio taxis or auto rickshaws;
- (xvi) services by way of transportation of goods—
 - a. by road except the services of a goods transportation agency; or a courier agency;
 - b. by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
 - c. by inland waterways;
- (xvii) funeral, burial, crematorium or mortuary services including transportation of the deceased.

E. Declared Services - Section 66E

The following services are Declared Services :

- (i) Renting of immovable property other than residential house used for the purpose of residence.
- (ii) Construction of complex, building, civil structure or part thereof, except where entire consideration is received after the completion certificate.
- (iii) Temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (iv) Development, Design, programming, customisation, adaptation, upgradation, enhancement, implementation of Information technology software.
- (v) Agreeing to refrain from an act, or to tolerate an act / situation, or to do an act.
- (vi) Transfer of Goods by hiring, leasing, licensing or in any such manner without transfer of right to use such goods.

- (vii) Activities in relation to delivery of goods on hire purchase or payment by instalments.
- (viii) Service portion in the execution of works contract.
- (ix) Service portion in an activity wherein food or any other article of human consumption / drink is supplied in any manner as a part of activity.

F. Principles of Interpretation for specified description of services or bundled services - Section 66F

- (i) Unless specified, reference to a service (referred as main service) shall not include reference to a service which is used for providing main service.
- (ii) Where a service is capable of differential treatment for any person because of its description, the most specific description will be preferred over general description.
- (iii) Subject to (ii) above, the taxability of a bundled service is determined in the following manner :
 - If various elements of such service are naturally bundled in the ordinary course of business, it is considered a single service which gives it essential character.
 - Even if various elements are not naturally bundled in ordinary course of business, it will be considered a single service which results in highest liability of service tax.

For the above, the term ‘bundled service’ is defined to mean a bundled of various services provided where elements of one service is combined with an element of any other service or services.

3. Determination of rate of tax, value of taxable service & rate of exchange

The New section 67A is proposed to be inserted to provide that the rate of service tax, value of a taxable service and rate of exchange if any shall be in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

4. New Reverse Charge Mechanism

Section 68(2) of the Finance Act, 1994 is being amended to put the onus of payment of service tax on reverse charge basis partly on service provider and partly on service receiver. The scheme is proposed to be made applicable to 3 specific services where service provider is either an individual or a firm or LLP and the recipient is a body corporate. These three services are hiring of means of transport; construction and man power supply.

(Refer Notification No. 15/2012 dated 17-03-2012 which can be accessed at <http://www.servicetax.gov.in/st-notfns-home.htm>.)

This notification shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect.

5. Renting of Immovable Property Service

Constitutional validity of the levy of service tax on renting of immovable property has been the subject matter of litigation leading to pronouncement of court judgments favorable to revenue, including those of Honourable Delhi High Court and Honourable Supreme Court.

Taking an overall view, Section 80 has been amended to provide relief from penalty if service tax, due on renting of immovable property service (as on 6 March 2012), is paid in full along with the interest within six months of date of enactment of the Finance Bill, 2012.

6. Exemptions and Abatements

A. Retrospective Exemptions are as follows :

Particulars exemption	Retrospective exemption from
Repairs of Road	16 th June, 2005
Management, maintenance or repair services in relation to non commercial government buildings	16 th June, 2005
Non reversal of Cenvat Credit in case of services provided to the authorized operations of SEZ	10 th February, 2006
Exempt services provided by club & association (including registered Co-op societies) to all its members for specified project. Earlier only associations of dyeing units were exempt.	16 th June, 2005

The Provisions are made for refund of service tax paid for the aforesaid period. The claimant would have to apply for refund within 6 months from the enactment of Finance Bill, 2012.

B. In addition to the ‘Negative list of services’ referred above, the new method of taxation of services proposed would have several exemptions which are referred to as:

- (i) Mega Exemption (Notification No. 12/2012 dated 17.03.2012) providing for 34 exemptions. The list of 34 exemptions given in this notification can be accessed at <http://www.servicetax.gov.in/st-notfns-home.htm>.
- (ii) Other exemptions proposed to be issued as per the TRU Circular.

- C. Research & Development Cess : In case of Import of Technology , from so much of service tax payable u/s. 66B equivalent to the amount of cess payable on said import. Provided that the exemption shall be available only if the Research and Development cess is paid at the time or before the payment for the service.
(Refer Notification No. 14/2012 dated 17-03-2012 accessible at <http://www.servicetax.gov.in/st-notfns-home.htm>.)
- D. The Central Government vide Notification No. 13/2012 dated 17-03-2012 granted exemption in the form abatement/rebates to the service providers which can be accessible at <http://www.servicetax.gov.in/st-notfns-home.htm>.
- E. Threshold Exemption
Notification No. 6/2005 – ST dated 1-3-2005 is amended to provide that instead of calculating the basic exemption of Rs. 10 Lakh on receipt basis, it will now be calculated on the basis of the aggregate value of taxable services charged in the first consecutive invoices issued or required to be issued during a financial year.

7. Amendment in Rules

A. Amendment in the Service Tax (Determination of Value) Rules, 2006

As per existing Rules, value of taxable service involved in the execution of a works contract was computed as gross amount invoiced less value of goods.

- 1) Now it is proposed that if value of taxable services cannot be arrived as above:
- (i) In case of contracts for original works (e.g. new constructions), Service Tax is payable on :
 - a) 40% of total amount charged for the works contract.
 - b) 25% of total amount charged if the same includes value of land.
 - (ii) In case of other works contract (other than original works) including completion and finishing services, Service Tax will be payable on 60% of total amount charged.
- It has been clarified that Cenvat credit of excise duty paid on the goods, property which is transferred in the execution of the works contract will not be available.
- (iii) The value of taxable service in supply of food or drinks in a restaurant or outdoor catering shall be 40% for services at a restaurant and 50% for outdoor catering services.
- 2) Demurrage value is now included in value of taxable services.
- 3) The following are excluded from the value of taxable services
- (i) Interest on deposit & delay in payment
 - (ii) Accidental damages on unforeseen actions

B. Amendment in Service Tax Rules, 1994

- 1) The time period provided in rule 4A for issuance of invoice is being increased to 30 days from the existing time period of 14 days from the date of completion of service. For banks and financial institutions providing banking and other financial services, the same period shall be 45 days;
- 2) Erstwhile limit of Rupees 2 lakh for self adjustment of excess service tax paid in particular month or quarter has been dispensed off permitting unlimited amount adjustment under Rule 6(4A) (condition that such excess is not on account of interpretation of law, classification, valuation, etc. remains). Also now there will be no need to intimate the details and reasons for adjustment to Superintendent of Central Excise within 15 days from the date of such adjustment.
- 3) At present, in the case of export and, individuals and firms rendering eight specified services, the point of taxation is the date of payment subject to certain conditions. This special dispensation is being shifted from the Point of Taxation Rules to the Service Tax Rules;
 - a) In case of exporters, the period extended by the Reserve Bank of India on specific requests is also being included in the period for which the tax liability is allowed to be deferred;
 - b) The option of deferred payment is being allowed for all service providers rather than for specific services. The facility will be available only to individuals and partnership firms (including limited liability partnership) upto a turnover of taxable services of Rupees 50 lakhs subject to the condition that their turnover of taxable services in previous year was below Rupees 50 lakhs. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

C. Amendment in Point of Taxation Rules, 2011

- 1) Change the definition of continuous supply of service to capture the entire dimension of the concept, namely, the recurrent nature of services and the obligation for payment periodically or from time-to-time;
- 2) Omit rule 6 in respect of continuous supply of service and merge it with rule 3. Rules 4 and 5, which deal with situations covering change in effective rate of tax and taxation of new services, shall now be applicable to continuous supply of services also.
- 3) A new rule 2A has been provided for deciphering the 'date of payment'. In the normal course it shall be the earlier of the date of entry in the books of accounts or date of credit in bank account. However, when there is change in effective rate of tax or a new levy between the said two dates, the date of payment shall be the date of actual credit in bank account, if the amount is credited in the bank within four working days after the date of such change.

4) To give an option to determine the point of taxation in respect of advances upto Rupees 1000/- received in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment; and

5) Incorporate a new residual rule 8A to ascertain point of taxation in cases where the same cannot be ascertained by the rules prescribed.

8. Harmonization of Service Tax procedures with Central Excise

A. Introduction of Service Tax audit vide New Section 72 A in line with 14 A and 14 AA of the CE Act 1944.

B. The one year time limit for issuance of notice u/s. 73 for demanding service tax is proposed to be increased to 18 months.

C. A new provision is proposed to be made in section 73 to provide that follow on notices issued on the same grounds need not repeat the grounds but only state the amount of service tax chargeable for the subsequent period, served on the assessee with reference to the earlier demand notice, will be deemed as a show cause notice.

D. Section 83 is proposed to be amended to make Settlement Commission provisions and Revision mechanism applicable to service tax in line with the similar provisions contained in the Central Excise Act, 1944

E. Harmonizing the Limitation of filing appeals by the assessee by amending Section 85 and 86 to be in line with Section 35 and 35 E of the CE Act 1944.

i) Time Limit for filing an appeal by an assessee before the CCE(A) is proposed to be reduced from the 3 months to 2 months.

ii) Power of the CCE(A) to condone a delay in filing an appeal is proposed to be reduced to 1 month from the present 3 months.

iii) Time Limit for filing an appeal by the Department before the Tribunal is proposed to be increased from the 3 months to 4 months.

F. Knowingly evading payment of service tax is sought to be made an offence punishable with prosecution U/s. 89.

G. Section 94(2) is amended for compounding of offences in line with the Central Excise (Compounding of Offences) Rules 2005.

H. Simplified one page common monthly return for service tax and Excise in Form EST-1.

SECTORAL IMPACT

Agriculture

Positive

- Higher agricultural credit (target raised by Rs. 1tn); extension of subvention of interest on farm loans and continued emphasis on expansion of Green Revolution in the Eastern states.
- Allocation for Accelerated Irrigation Benefit Programme (AIBP) being stepped up by 13% to Rs. 142.4 bn.
- Irrigation and Water Resource Finance Company being operationalised to mobilise large resources to fund irrigation projects.
- Increased emphasis on creating grain storage capacity and warehousing facilities.
- Full exemption from basic customs duty for import of equipment for expansion or setting up of fertiliser projects upto 31st March, 2015.

Automobile

Neutral

- Excise duty increased to 12% from 10% for 2w, 4w and Commercial Vehicles
- Excise duty increased to 24% from 22% for large cars (above 4000 mm) and cars which attracted mixed rate of 22% +Rs.15000/vehicle will now be at 27%.
- Customs Duty on CBU's of large cars / MUV's / SUV's increased from 60% to 75%, will offer shelter to domestic manufacturers.
- No extra tax on diesel vehicles
- Credit flow to farmers has increased to Rs.5.75tn from Rs.4.75tn; Interest subvention rate retained at 3% for efficient farmers (effective interest rate at 4%)

Aviation

Positive

- ECB permission for Airlines companies to raise \$1 bn for Working capital requirement
- Full exemption from Basic Customs Duty and CVD to aircraft and testing parts by MRO's

Banking and Finance

Positive

- Proposed to provide Rs. 158.88 bn for PSU Banks recapitalisation (last year Rs. 60 bn)
- Net market borrowing of the Government through dated securities in 2012-13 would be Rs. 4,790 bn (gross Rs. 5,690 bn) higher than the street expectations
- Permitting two-way fungibility in Indian Depository Receipts (IDRs)
- Introduced Rajiv Gandhi Equity Saving Scheme to allow for income tax deduction of 50% to new retail investors, who invest upto Rs. 50,000 directly in equities and whose annual income is below Rs.10 lakh. The scheme will have a lock-in period of 3 years.
- Reduction in STT by 20% from 0.125% to 0.100% on cash delivery transactions.
- Interest on savings account, exempt upto Rs. 10,000
- A central "Know Your Customer" depository to be developed in FY13 to avoid multiplicity of registration and data upkeep

Cement

Neutral

- Change in excise duty from 10% to 12% (ad valorem)
- Basic customs duty of 5% and CVD of 1% on thermal coal reduced to Nil

Construction and Real Estate

Neutral

- Extension of existing scheme of interest subvention of 1% on housing loan upto Rs.15 lakh where the cost of the house does not exceed Rs.25 lakh for one more year.
- Allowing ECB for low cost affordable housing projects and withholding tax on ECB's for affordable housing reduced from 20% to 5% for 3 years.
- Investment linked deduction of capital expenditure incurred on affordable housing enhanced to 150%
- Application of TDS on the purchase and sale of property.
- Domestic transactions to come under the transfer pricing regulations especially with respect to transactions between tax holiday units and tax paying units.
- Increase in service tax from 10% to 12%

Fertilizers

Positive

- Basic custom duty reduced on specified soluble fertilizers and liquid fertilizers, other than urea, from 7.5% to 5% and from 5% to 2.5% respectively.
- Investment-linked deduction of capital expenditure incurred enhanced to 150%.
- To consider capital investment in fertilizer sector eligible for viability gap funding.

FMCG

Negative

- Increase in excise duty from 10% to 12%.
- Increase in service tax from 10% to 12%.
- Full exemption from basic customs duty provided to LCD and LED TV Panels
- Marginal decrease in tax burden for all taxpayers due to change in tax exemption limit and tax slabs.

Hotels

Neutral

- Increase in service tax from 10% to 12%.
- Deduction under section 35AD to continue even if the management of the hotel is transferred while continuing to own the hotel.

Healthcare and Pharmaceuticals

Positive

- Basic Customs Duty reduced from 5% to 2.5%, on soya protein to 15% and probiotic to 5%
- Concessional import duty regime for various healthcare products and equipments like glucometers, syringes, catheters, etc.
- Weighted Average R&D deduction of 200% to continue for next 5 years.
- Domestic transactions to come under the transfer pricing regulations especially with respect to transactions between tax holiday units and tax paying units.
- Advance Pricing Mechanism introduced for international transactions

Information Technology**Neutral**

- Payments for Software purchased from outside India, to be treated as Royalty and therefore liable for withholding tax.
- Advance Pricing Mechanism introduced for international transactions.
- Weighted deduction for in-house research extended by one year.
- Domestic transactions to come under the transfer pricing regulations especially with respect to transactions between tax holiday units and tax paying units.

Media and Entertainment**Negative**

- Payments for Software purchased from outside India, to be treated as Royalty and therefore liable for withholding tax.
- Payments for transmission by satellite, cable, optic fibre or any other such technology classified as “Royalty” retrospectively from 1st June, 1976.
- Advance Pricing Mechanism introduced for international transactions.

Metal & Mining**Neutral**

- Hike in excise duty from 10% to 12%
- Customs Duty on standard gold and platinum bars increased from 2% to 4%, and on non standard gold increased from 5% to 10%
- Import duty of 5% removed on coal
- Import duty on equipment for iron ore beneficiation and pelletisation reduced to 2.5%
- Extension of benefit under section 80-IA for one more year

Oil and Gas**Positive**

- OIDB cess levied on crude oil increased to Rs. 4,500 per tonne.
- Oil and Gas/LNG storage facilities and oil and gas pipelines will be made eligible sectors for Viability Gap Funding (VGF)
- Basic customs duty on Liquefied Natural Gas and Natural Gas will be fully exempted when imported for generation of electrical energy by a power generating company.
- Exemption in respect of tax on income received by certain foreign companies in India, in Indian currency, for import of crude oil.

Paper**Neutral**

- Waste paper is being fully exempt from basic customs duty

Ports and Logistics**Positive**

- Investment linked deduction of capital expenditure extended to Container Freight Stations and Inland Container Depots
- Tax free bonds for investment in Ports of Rs. 50 bn.
- Shipbuilding subsidy of Rs. 4 bn announced.

Power

Positive

- Coal India Limited (CIL) has been advised to sign fuel supply agreements, with power plants that have entered into long term Power Purchase Agreements with DISCOMs and would get commissioned on or before March 31, 2015.
- Full exemption from basic customs duty and a concessional CVD of 1% on imported coal till March, 2014.
- Increase in allocation to power projects from Rs. 100 bn tax-free bonds
- ECB allowed for power projects and TDS on such interest reduced to 5%.
- Proposal to remove the cascading effect of Dividend Distribution Tax
- Extension of benefit under section 80-IA for one more year

Retail

Neutral

- Marginal increase in consumer spending power due to adjustment in tax slab.
- GST network likely to be rolled-out by August 2012.
- Excise duty on branded garments decreased from 4.5% to 3.6%.
- Increase in service tax on rentals from 10% to 12%.
- Levy of excise duty of 1% on branded precious metal jewellery to be extended to include unbranded jewellery.
- Custom duty on gold ores and concentrates for use in manufacture of gold from 1% to 2%.

Roads and Highways

Positive

- Road sector target of 8,800 kms (previous year 7,300kms) under NHDP
- ECB allowed for capital expenditure on the maintenance and operations of toll systems for roads and highways so long as they are a part of the original project
- To raise corpus of rural infra development fund to Rs. 200 bn against Rs. 180 bn.
- To boost infrastructure development, tax free bonds of Rs.600 bn proposed to be issued by Government undertakings during 2012-13.

Telecom

Neutral

- Eligible for viability gap funding for fixed networks and for telecom towers.
- Payments for Software purchased from outside India, to be treated as Royalty and therefore liable for withholding tax
- Payments for transmission by satellite, cable, optic fibre or any other such technology classified as “Royalty” retrospectively from 1st June, 1976.
- Domestic transactions to come under the transfer pricing regulations especially with respect to transactions between tax holiday units and tax paying units.

Textiles

Positive

- Basic customs duty on shuttleless looms and on automatic silk-reeling and processing machinery reduced from 5% to Nil
- On ready-made garments bearing a brand name or sold under a brand name, the level of abatement from the retail sale price is increased from 55% to 70%

DO YOU HAVE A QUESTION ?

It has been our constant endeavour to maintain excellent relations with all our clients and contacts. This publication is just another mode of communication to keep in touch with all of you.

In this years' budget analysis we have included detailed analysis on other laws also. We have also collated a lot of information from various sources so that you have all the information on this years' budget at one place.

May you need any further information, clarification or explanation on any of the above provisions, please feel free to let us know, we will be glad to help you.

It goes without saying that any suggestion or feedback will be highly appreciated.

You can post / fax / email to us at the following :

M. L. BHUWANIA & CO. Chartered Accountants

Office Address :

F-11, 3rd floor, Manek Mahal,
90, Veer Nariman Road, Churchgate,
Mumbai – 400020, India

Tel : + 91 22 6117 4949

Fax : + 91 22 6117 4950

E-mail: ashish@mlbca.in

Web : www.mlbca.in

www.ggi.com