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# **ANALYSIS OF THE BUDGET 2011 – 2012**

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# THE FINANCE BILL, 2010

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## FOREWORD

The Indian economy has emerged with remarkable rapidity from the slowdown caused by the global financial crisis. Swift and broad based growth in 2010-11 has put the economy back on its pre-crisis growth trajectory. Fiscal consolidation has been impressive. Significant progress in critical institutional reforms e.g. permitting SEBI registered Mutual Fund to access subscription from Foreign Investors and raising FII limits in corporate bonds for investment in Infrastructure will provide a major boost to infrastructure sector and thus will set the pace for double – digit growth in the near future.

This period of economic stress has severely tested citizens & policy makers alike. The post crisis growth has come with its own set of challenges. Structural concerns on inflation management, implementation gaps, leakages from public programmes and the quality of outcomes are recognised challenges in this country. There is wide spread impression about lack of governance and gap in public accountability, due to various purported scams.

The Budget attempts to provide an incentive to growth by increasing expenditure in productive areas and aims at reallocation of resources towards the critical sector such as Agriculture and infrastructure without really increasing overall expenditure outlays. Gross Domestic Product (GDP) estimated to have grown at 8.6 % in 2010-11 in real terms. On other major reforms, a part of last year's foreword can be reproduced:

*“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.”*

It may be noticed that only one of the above items has actually been implemented i.e. adoption of IFRS by certain category of entities. The thrust on infrastructure, power, micro-finance and SME's to continue, but may be dampened to some extent due to some proposed amendments in tax laws. GST and DTC have been deferred to the next year and RBI's announcement of issuing additional banking licences to private sector companies is still to see light. This only highlights one of the other major challenges, which slows down any kind of progressive move in India, which is 'implementation'

In an attempt to curb the parallel economy, the Honourable Finance Minister has not introduced an amnesty scheme which was expected, but has announced changes such as lower tax on foreign dividends which might be an incentive. To curb the flow of unaccounted income, he has also strengthened transfer pricing regulations and introduced provisions with respect to transactions with persons in notified jurisdictional areas.

This budget seems as promising as the growth story of India and the endurance of the UPA government to build the India of the future. One will have to wait and see which promises are fulfilled and which ones are made, 'just to be broken'.

## **Budget Highlights**

- Direct Taxes Code will be effective from 1st April, 2012
- Basic Exemption limits for individuals raised by Rs. 20,000. Age limit for senior citizens reduced to 60 years from 65 years. Basic exemption limit for senior citizen above 80 years increased to Rs. 5 lakh
- Extension of investment on long-term infrastructure bonds u/s. 80CCF by one more year
- Surcharge on Domestic companies reduced to 5% from 7.5%
- Minimum Alternate Tax (MAT) raised from 18% to 18.5% of book profits
- SEZ developers and operating units subject to MAT at 18.5%. SEZ Developers subject to Dividend Distribution Tax at 15%
- LLP's to pay Alternate Minimum Tax (AMT) under Section 115JC
- Employer's contribution to New Pension Scheme is to be allowed as deduction (restricted to 10% of salary) under section 36 instead of section 80CCD
- Investment-linked deductions for fertilisers and developers of affordable housing
- Tax Holiday u/s. 80-IA(4)(iv) is extended for up to 31st March, 2012
- Weighted deduction u/s. 35 for contributions made to national laboratory or a university or IIT or a specified person for scientific research, increased to 200%
- Tax on foreign dividends for companies reduced from 30% to 15%
- Tax on Interest received by non-residents from notified infrastructure debt funds at the rate of 5%
- Due date for the filing of Transfer Pricing report in form 3CEB and filing of return of income by such assessee has been extended to 30th November
- Power of Transfer Pricing Officer has been widened to include conducting surveys
- Counter measures introduced for transactions with persons located in notified jurisdictional area

- Peak rate of basic custom duty unchanged at 10%. Basic custom duty rates of 2%, 2.5% and 3% unified at the rate of 2.5%
- Time limit for demanding customs duty and claiming refund of duty enhanced from six months to one year for all categories of importers
- Self – assessment provisions introduced in payment of Custom Duty
- Special additional duty on the clearances from SEZ to DTA exempted provided they are not exempt from the levy of VAT/sales tax
- Definition of “Completely Knocked Down unit” of a vehicle including two wheelers, which were eligible for concessional duty, to exclude units containing pre-assembled engine or gearbox or transmission mechanism or a chassis where any of such parts or sub-assemblies is installed
- The concessional rate of excise duty of 4% on items like prepared foodstuff like sugar confectionary, pastry and cakes starches etc. increased to 5%
- Non-cenvatable excise duty of 1% to be imposed on about 130 specified items
- Branded garments to attract excise levy at 10% on 60% of the MRP
- Individual and sole proprietor assesseees with a turnover upto Rs. 60 lakh not to be subjected to audit
- No change in rate of Service tax. The effective rate remains at i.e. 10.30 %
- Service tax extended to services by air conditioned restaurants having liquor license and to short term accommodation in hotels
- Scope of certain existing services expanded / altered. These include services by legal professionals, health services, life insurance services, business support service etc
- Point of Taxation Rules, 2011 have been framed and made effective from 1<sup>st</sup> April 2011 which has changed the chargeability of service tax from receipt basis to accrual basis
- Interest for delayed payment of service tax increased to 18% a year and penalty provisions amended
- Provisions relating to exemption from service tax for services provided to SEZ amended
- No change in CST rates

## THE FINANCE BILL, 2011

The following are the relevant amendments proposed by the Finance Bill, 2010 as introduced in the Lok Sabha on 28<sup>th</sup> February 2011. 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 2012-2013** UNLESS SPECIFICALLY MENTIONED OTHERWISE

### INCOME TAX

#### 1. Rates of Tax

- A. Basic exemption limit has been increased by Rs. 20,000. Age limit for classifying as Senior Citizen has been brought down to 60 years from 65 years. Also a new category of 'Very Senior Citizen' who are over 80 years old has been introduced with a basic exemption of Rs. 500,000. The tax rate for the firms & companies will continue to be the same as that specified for assessment year 2011-12. The existing surcharge of 7.5% on a domestic company has been reduced to 5%.

For the Financial Year 2011-12 relevant to the assessment year 2012-13, additional surcharge called the "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> (above 65 years of age)	<u>Women</u> (below 65 years of age)	<u>Others</u>
Upto Rs. 1,80,000	Nil	Nil	Nil	Nil
Rs. 1,80,001 to Rs. 1,90,000	Nil	Nil	Nil	10%
Rs. 1,90,001 to Rs. 2,50,000	Nil	Nil	10%	10%
Rs. 2,50,001 to Rs. 5,00,000	Nil	10%	10%	10%
Rs. 5,00,001 to Rs. 8,00,000	20%	20%	20%	20%
Above Rs. 8,00,000	30%	30%	30%	30%

Similar to Assessment Year 2011-12, there will be no surcharge leviable in Assessment Year 2012-13 as well for the above Assessee.



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

The rates for co-operative societies will continue to be same as those specified for assessment year 2011-12 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%

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 2011-12 i.e. 30%. LLP's will be liable to pay Alternate Minimum Tax (AMT) u/s. 115JC. 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 2011-12 i.e. 30%. No surcharge will be levied.

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

The rate of tax in the case of domestic companies will continue to be the same as that specified for the assessment year 2011-12 i.e. 30%. However the existing surcharge of 7.5% on a domestic company whose total income exceeds Rs. 1 crore is proposed to be reduced to 5%.

(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 2011-12 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. There is a reduction in the rate of surcharge from 2.5% to 2% to be levied where total income exceeds Rs. 1 crore.

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

MAT is raised from 18% to 18.5%. Surcharge at 7.5% on MAT is reduced to 5%.

C. **Tax on Capital Gain**

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

D. Dividend Distribution Tax

The rates for this item are the same as those specified for the assessment year 2011-12 at 15%, effective rate of 16.2225%

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

There is no change in the rate of deduction of tax at source (TDS) / tax collected at source (TCS). Surcharge will continue to be considered in determining the TDS from payments made to foreign companies at the revised rate of 2%. Education Cess and Secondary and Higher Education Cess will continue to be considered in determining the TDS from payment made to foreign companies, non residents and salaried employees.

However it is proposed to deduct TDS at 5%, from interest income paid to a non-resident by a notified infrastructure debt fund u/s. 194LB

The said amendment will be applicable with effect from 1<sup>st</sup> June, 2011.

2. **Definition of “Charitable Purpose” – SECTION 2(15)**

“Charitable purpose” has been defined in Section 2(15) which, inter alia, includes “the advancement of any other object of general public utility”. However, as per the first proviso to Section 2(15), “the advancement of any other object of general public utility” is not 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 service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

A second proviso was introduced last year which laid down that “the advancement of any other object of general public utility” shall continue to be a “charitable purpose” if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business do not exceed Rs. 10 lakh in the accounting year (i.e. previous year). It is now proposed to increase this amount to Rs. 25 lakh.

3. **Provisions relating to Minimum Alternate Tax (MAT) and Dividend Distribution Tax (DDT) in case of Special Economic Zones (SEZ) – SECTIONS 10(34), 115JB, 115-O**

Under the existing provisions of section 10A, a deduction of 100% is allowed in respect of profits and gains derived by a unit located in a Special Economic Zone (SEZ) from the export of articles or things or services for the first five consecutive assessment years; of 50% for further five assessment years; and thereafter, of 50% of the ploughed back export profit for the next five years.

Further, under section 80-IA, a deduction of 100% is allowed in respect of profits and gains derived by an undertaking from the business of development of an SEZ notified on or after 1<sup>st</sup> April, 2005 from the total income for any ten consecutive assessment years out of fifteen years beginning from the year in which the SEZ is notified by the Central Government.

Under the existing provisions of section 115JB(6), an exemption is allowed from payment of Minimum Alternate Tax (MAT) on book profit in respect of the income accrued or arising on or after 1<sup>st</sup> April 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or SEZ, as the case may be.

Further, under the existing provisions of section 115-O(6), an exemption is allowed from payment of Dividend Distribution Tax (DDT) in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends on or after 1<sup>st</sup> April 2005, out of its current income. Such dividend was also exempt from tax under section 10(34).

It is now proposed to withdraw such exemption from payment of MAT for SEZ developers and units operating in an SEZ. Therefore these entities will now be liable to pay MAT on book profits. This amendment will take effect from 1<sup>st</sup> April 2012 and will accordingly apply in relation to assessment year 2012-13 onwards.

Moreover, it is also proposed to withdraw the exemption from payment of DDT in the case of SEZ Developers. Therefore SEZ Developers will now be liable to pay DDT on dividends. Consequential amendment is proposed to delete the explanation under section 10(34).

These amendments will take effect from 1<sup>st</sup> June 2011.

4. **Exemption of certain perquisites of Chairmen and Members of Union Public Service Commission (UPSC) – SECTION 10(45)**

Currently, specified perquisites of the Chief Election Commissioner or Election Commissioner and the judges of the Supreme Court are exempt from taxation consequent to the enabling provisions in the respective Acts governing their service conditions. It is proposed to insert a new clause in Section 10 to extend similar benefit of exemption in respect of specific perquisites and allowances, which will be notified by the Central Government, received by both serving as well as retired Chairmen and Members of the UPSC.

This amendment is proposed to take effect retrospectively from 1<sup>st</sup> April 2008.

5. **Exemption of specified income of notified body or authority or trust or board or commission – SECTIONS 10(46), 139(4C)(g)**

It is proposed to insert a new clause in section 10 to provide exemption from income-tax to any specified income of a body, authority, trust or commission which is set up or constituted by a Central, State or Provincial Act or constituted by the Central Government or a State Government with the object of regulating or administering an activity for the benefit of the general public, provided the following conditions are met :

- (i) It has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government with the object of regulating or administering an activity for the benefit of the general public;
- (ii) It is not engaged in any commercial activity; and
- (iii) It is notified by the Central Government in the Official Gazette for the purposes of this clause.

The nature and extent of income to be exempted will also be specified by the Central Government while notifying such entity. The return of income for such notified entities will be filed under a new proposed section 139(4C)(g).

This amendment will take effect from 1<sup>st</sup> June 2011.

6. **Income of Infrastructure Debt Funds and Interest received from such funds by non-residents – SECTIONS 10(47), 115A, 139(4C)(h)**

Section 10 excludes certain incomes from the ambit of total income. It is proposed to amend section 10 so as to provide enabling power to the Central Government to notify any infrastructure debt fund which is set up in accordance with the prescribed guidelines. Once notified, the income of such debt fund would be exempt from tax. It will, however, be required to file a return of income under a new proposed section 139(4C)(h).

It is also proposed to amend section 115A to provide that any interest received by a non-resident from such notified infrastructure debt fund shall be taxable at the rate of 5% on the gross amount of such interest income.

It is further proposed to insert a new section 194LB to provide that TDS shall be deducted at the rate of 5% by such notified infrastructure debt fund on any interest paid by it to a non-resident.

These amendments are proposed to take effect from 1<sup>st</sup> June 2011.

7. **Weighted deduction for scientific research and development - SECTION 35(2AA)**

Under Section 35(2AA), weighted deduction to the extent of 175% is allowed for any sum paid to a National Laboratory or a university or an IIT or a specific person for the purpose of an approved scientific research programme.

In order to encourage contributions to such approved entities and programmes for the purposes of scientific research, it is proposed to increase the weighted deduction from 175% to 200%.

8. **Investment linked deduction for specified business – SECTION 35AD**

Under section 35AD, an investment-linked tax incentive is available as a 100% deduction 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 the “specified business” during the previous year in which such expenditure is incurred.

It is proposed to include two new businesses as “specified business”

- (i) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed
- (ii) investment in a new plant or in a newly installed capacity in an existing plant for production of fertiliser

The above two business activity should commence on or after 1<sup>st</sup> April 2011 to be eligible for deduction.

Under section 73A, any loss of a “specified business” (under section 35AD) is allowed to be set-off against profit and gains of any other “specified business”. In order to remove any ambiguity in this regard in respect of the business of hotels and hospitals, it is proposed to remove the word “new” from the definition of “specified business” in the case of hotels and hospitals under section 35AD(8)(c). With this amendment, the loss of an assessee on account of a “specified business” claiming deduction under section 35AD would be allowed to be set off against the profit of another “specified business” under section 73A, whether or not the latter is eligible for deduction under section 35AD. Therefore, an assessee who currently operates a hospital or a hotel would be able to set off the profits of such business against the losses, if any, of a new hospital or new hotel which begins to operate after 1<sup>st</sup> April 2010 and which is eligible for deduction of expenditure under section 35AD.

9. **Tax Benefits for New Pension Scheme – SECTIONS 36(1)(iva), 80CCE**

Currently, the contribution made by an employer towards a recognised provident fund, an approved superannuation fund or an approved gratuity fund is allowable as a deduction from business income under section 36, subject to

certain limits. However, the contribution made by an employer to the NPS is not allowed as a deduction.

It is, therefore, proposed to amend section 36 so as to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee, to the extent 10% of the salary, shall be allowed as deduction in computing the income under the head “Profits and gains of business or profession”.

Section 80CCD provides, *inter alia*, a deduction in respect of contributions made by an employee as well as an employer to the New Pension System (NPS) account on behalf of the employee. In view of the provisions of section 80CCE, the aggregate deduction under sections 80C, 80CCC and 80CCD cannot exceed Rs. 100,000. The allowable deduction under section 80CCD includes both the employee’s as well the employer’s contribution to the NPS.

It is proposed to amend section 80CCE so as to provide that the contribution made by the Central Government or any other employer to a pension scheme under section 80CCD(2) shall be excluded from the limit of Rs. 100,000 provided under section 80CCE.

10. **Deduction for investment in long term infrastructure bonds – SECTION 80CCF**

Under the existing provisions of section 80CCF, a sum of Rs. 20,000 (over and above the existing limit of Rs. 100,00 available under section 80CCE for tax savings) is allowed as deduction in computing the total income of an individual or a Hindu undivided family if that sum is paid or deposited during the previous year relevant to the assessment year 2011-12 in long term infrastructure bonds as notified by the Central Government.

It is proposed to extend the deduction under section 80CCF for investments in notified long term infrastructure bonds in the assessment year 2012-13 also.

11. **Deduction in respect of profits & gains for power sector - SECTION 80-IA(4)(iv)**

Under the existing provisions of section 80-IA(4)(iv), a deduction of profits and gains is allowed for entities who fulfill conditions mentioned in the section. These are basically power generation (e.g. windmill) and distribution companies. The sunset date for such deduction was 31<sup>st</sup> March 2011. It is now proposed to extend the sunset date by one more year to 31<sup>st</sup> March 2012.

12. **Deduction in respect of profits of an undertaking engaged in commercial production of mineral oil - SECTION 80-IB(9)**

Under the existing provisions of section 80-IB(9), a 7 year profit-linked deduction of 100% is available to an undertaking which fulfills any of the conditions in the section.

For the purposes of claiming this deduction, all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy (NELP) dated 10<sup>th</sup> February 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner, are treated as a single “undertaking”.

Thus, an undertaking which is located in any part of India and is engaged in commercial productions of mineral oil, is eligible for deduction, if it has begun or begins production commercial production of mineral oil at any time after 1<sup>st</sup> April 1997. No sunset date has been provided for such business.

It is proposed that the aforesaid deduction will not be available for blocks licensed under a contract awarded after 31<sup>st</sup> March 2011.

13. **Rationalisation of Transfer Pricing provisions – SECTION 92C(2), 92CA(2A), 92CA(7), 139(1)**

- A. Section 92C provides the procedure for computation of the Arm’s Length Price (ALP). The section provides the methods of computing the ALP and mandates that the most appropriate method should be chosen to compute ALP. It is also provided that if more than one price is determined by the chosen method, the ALP shall be taken to be the arithmetical mean of such prices. The second proviso to section 92C(2) provides that if the variation between the actual price of the transaction and the ALP, as determined above, does not exceed 5% of the actual price, then, no adjustment will be made and the actual price shall be treated as the ALP.

It is proposed to amend section 92C of the Act to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by Central Government in this behalf.

- B. Section 92CA(2) of the Act provides that the Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction, which has been referred to the TPO by the Assessing Officer on the basis of the Transfer Pricing Report filed.

It is proposed to introduce a new clause (2A) under section 92CA so as to specifically provide that the jurisdiction of the Transfer Pricing Officer shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently, in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

This amendment will take effect from 1<sup>st</sup> June 2011.

- C. Section 92CA(7) provides that for the purpose of determining the ALP, the TPO can exercise powers available to an assessing officer under section 131(1) and section 133(6). These are powers of summoning or calling for details for the

purpose of inquiry or investigation into the matter.

This amendment will take effect from 1<sup>st</sup> June 2011.

- D. In order to enable the TPO to conduct on-the-spot enquiry and verification, it is proposed to amend section 92CA(7) so as to enable the TPO to also exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.

This amendment will take effect from 1<sup>st</sup> June 2011.

- E. Section 139 stipulates 30<sup>th</sup> September of the assessment year as the due date for filing of return of income in case of corporate assessees. In addition to filing a return of income, assessees who have undertaken international transactions are also required (under the provisions of section 92E) to prepare and file a transfer pricing report in Form 3CEB before the due date for filing of return of income.

It is proposed to amend section 139 to extend the due date for filing of return of income and transfer pricing report to 30<sup>th</sup> November of the assessment year.

This amendment will take effect from 1<sup>st</sup> April 2011.

14. **Special measures in respect of transactions with persons located in notified jurisdictional area – SECTION 94A**

In order to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India, anti-avoidance measures have been proposed in the Income-tax Act.

It is proposed to insert a new section 94A in the Act to specifically deal with transactions undertaken with persons located in such country or area. The proposed section provides –

- (i) an enabling power to the Central Government to notify any country or territory outside India, having regard to the lack of effective exchange of information by it with India, as a notified jurisdictional area;
- (ii) that if an assessee enters into a transaction, where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises and the transaction shall be deemed to be an international transaction and accordingly, transfer pricing regulations shall apply to such transactions;
- (iii) that no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization, in the prescribed form, authorizing the Board or any other income-tax authority acting on its behalf, to seek relevant information from the said



financial institution;

- (iv) that no deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any provision of the Act unless the assessee maintains such other documents and furnishes the information as may be prescribed;
- (v) that if any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee;
- (vi) that any payment made to a person located in the notified jurisdictional area shall be liable to deduction of tax at the higher of the rates specified in the relevant provision of the Act or rate or rates in force or a rate of 30%.

This amendment is proposed to take effect from 1<sup>st</sup> June 2011.

15. **Taxation of dividends received from foreign subsidiary companies – SECTION 115BBD.**

Under the existing provisions, dividend received from foreign companies is taxable in the hands of the resident shareholder at his applicable marginal rate of tax. Therefore, in case of Indian companies which receive foreign dividend, such dividend is taxable at the rate of 30% plus applicable surcharge and cess.

It is proposed to insert a new section 115BBD to provide that where an Indian company earns income by way of dividends from a foreign subsidiary company (where it holds more than 50% of the nominal value of equity shares), then such dividends shall be taxable at the rate of 15% (plus applicable surcharge and cess) on the gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act.

16. **Minimum Alternate Tax – SECTION 115JB**

At present, as per the provisions of Section 115JB, MAT is charged @ 18% of the book profit in case tax payable on the total income computed under the normal provisions is lower.

The rate of MAT has now been increased from 18% to 18.5%. Since the surcharge has been reduced to from 7.5% to 5%, the effective rate of MAT in case of a domestic company has increased from ~19.93% to ~20%, in cases where surcharge is applicable and from 18.54% to ~19.06% in cases without surcharge where the total income is less than Rs. 1 crore.

17. **Alternate Minimum Tax (AMT) for Limited Liability Partnerships (LLP) – SECTION 115JC**

The Limited Liability Partnership Act, 2008 (LLP) has come into effect in 2009. The LLP has features of both a body corporate as well as a traditional partnership. The Income-tax Act provides for the same taxation regime for a limited liability partnership as is applicable to a partnership firm. It also provides tax neutrality (subject to fulfilment of certain conditions) to conversion of a private limited company or an unlisted public company into an LLP.

An LLP being treated as a firm for taxation, has the following tax advantages over a company under the Income-tax Act :

- i) it is not subject to Minimum Alternate Tax;
- ii) it is not subject to Dividend Distribution Tax (DDT);
- iii) it is not subject to Deemed Dividend under section 2(22)(e); and
- iv) it is not subject to surcharge.

Under the proposed amendment, where the regular income-tax payable for a previous year by a limited liability partnership 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 limited liability partnership and it shall be liable to pay income-tax on such total income at the rate of 18.5%.

For the purpose of the above, “adjusted total income” shall be the total income before giving effect to this newly inserted Chapter XII-BA as increased by the deductions claimed under any section included in Chapter VI-A under the heading “C – Deductions in respect of certain incomes” and deduction claimed under section 10AA. To simplify, all profits under sections like 10AA, 80-IA, 80-IB, 80-IC will be added back to the total income computed under normal provisions

All other proposed provisions with respect to filing of report from an accountant, credit of taxes paid under AMT and other provisions are the same as, applicable to a company, under section 115JB.

18. **Rationalisation of Tax on Income distributed to unit holders – SECTION 115R(2)**

Under the existing provisions contained in section 115R(2), a Mutual Fund is liable to pay additional income-tax on the amount of income distributed to its unit holders. It is proposed to levy additional income-tax at a higher rate of 30% on income distributed by debt funds to a person other than an individual or HUF. With acceptance of the proposal the rates will as follows :

Distribution by	If Recipient is	Present Rate	Proposed Rate
Money Market Mutual Fund or Liquid Fund	Individual or HUF	25%	25%

Money Market Mutual Fund or Liquid Fund	Other than Individual or HUF	25%	30%
Debt Fund other than Money Market Mutual Fund or Liquid Fund	Individual or HUF	12.5%	12.5%
Debt Fund other than Money Market Mutual Fund or Liquid Fund	Other than Individual or HUF	20%	30%
Equity Oriented Fund	Any	Nil	Nil

19. **Collection of information on requests received from tax authorities outside India as part of agreement for exchange of information – SECTIONS 131, 133**

Under the existing provisions of section 131(1), certain income-tax authorities have been conferred the same powers as are available to a Civil Court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions.

It is proposed to insert sub-section (2) in section 131. The new sub-section provides that for the purpose of making an enquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority, not below the rank of Assistant Commissioner of Income-tax, as notified by the Board in this behalf, to exercise the powers currently conferred on income-tax authorities referred to in section 131(1). The authority so notified by the Board shall be able to exercise the powers under section 131(1) notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

It is further proposed to amend section 131(3) so as to empower the aforesaid authority, as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

Similar amendments have also been proposed in section 133 of the Income-tax Act to widen the powers.

These amendments will take effect from 1<sup>st</sup> June 2011.

20. **Exemption to a class or classes of persons from furnishing a return of income – SECTIONS 139, 296**

Under the existing provisions contained in section 139(1), every person, if his total income during the previous year exceeds the maximum amount which is not chargeable to income-tax, is required to furnish a return of his income.

In the case of salaried tax payer, the entire tax liability is discharged by the employer through deduction of tax at source. Complete details of such tax payers are also reported by the employer through Tax Deduction at Source (TDS) statements. Therefore, in cases where there is no other source of income, filing of a return is a duplication of existing information.

In order to reduce the compliance burden on small tax payer, it is proposed to insert sub-section (1C) in section 139. This provision empowers the Central Government to exempt, by notification in the Official Gazette, any class or classes of persons from the requirement of furnishing a return of income, having regard to such conditions as may be specified in that notification.

Consequential amendments are also proposed to be made to the provisions of section 296 to provide that any notification issued under section 139(1C) shall be laid before Parliament

These amendments will take effect from 1<sup>st</sup> June 2011.

21. **Notification for processing of returns in Centralised Processing Centres – SECTION 143(1B)**

Under the existing provisions of section 143(1B), the Central Government may, for the purpose of giving effect to the scheme made under section 143(1A), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. However, no direction shall be issued after 31<sup>st</sup> March 2011.

It is proposed to amend section 143(1B) to extend the existing time limit for issue of notification to 31<sup>st</sup> March 2012.

This amendment will take effect retrospectively from 1<sup>st</sup> April 2011.

22. **Extension of time limit for assessments in case of exchange of information requested from tax authorities in jurisdictions outside India – SECTIONS 153, 153B**

Section 153 provides for the time limits for completion of assessments and reassessments. In Explanation 1 to section 153, certain periods specified therein are to be excluded while computing the period of limitation for completion of assessments and reassessments.

Accordingly, it is proposed to insert a new clause (viii) in Explanation 1 to section 153. It provides that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on

which the information so requested is received by the Commissioner, or a period of six months, whichever is less, shall be excluded.

Similar amendments are proposed to be made to section 153B

These amendments will take effect from 1<sup>st</sup> June 2011.

23. **Modification in the conditions for filing an application before the Settlement Commission – SECTION 245C(1)**

The existing provisions contained in the proviso to section 245C(1) allow an application to be made before the Settlement Commission if :

- (i) the proceedings have been initiated against the applicant under section 153A or under section 153C as a result of search or a requisition of books of account, as the case may be, and the additional amount of income-tax payable on the income disclosed in the application exceeds Rs. 50 lakh;
- (ii) in other cases, if the additional amount of income-tax payable on the income disclosed in the application exceeds Rs. 10 lakh.

It is proposed to expand the criteria for filing an application for settlement by a tax payer in whose case proceedings have been initiated as a result of search or requisition of books of account.

It is, therefore, proposed to insert a new clause (ia) in the proviso to section 245C(1). This stipulates that an application can also be made, where the applicant :

- (i) is related to the person in whose case proceedings have been initiated as a result of search and who has filed an application; and
- (ii) is a person in whose case proceedings have also been initiated as a result of search

The additional amount of income-tax payable on the income disclosed in his application exceeds Rs. 10 lakh.

As a consequence, a tax payer who is the subject matter of a search would be allowed to file an application for settlement if additional income-tax payable on the income disclosed in the application exceeds Rs. 50 lakh. Entities related to such a tax payer, who are also the subject matter of search, would now be allowed to file an application for settlement, if additional income-tax payable in their application exceeds Rs. 10 lakh.

The relationship between the person who makes an application under clause (ia) of the proviso to section 245C(1) and the person mentioned in clause (i) of the proviso is defined by inserting an Explanation in the section.

This amendment will take effect from 1<sup>st</sup> June 2011.

24. **Power of the Settlement Commission to rectify its orders – SECTION 245D**

The existing provisions of section 245D(4) provide that the Settlement Commission may pass an order, as it thinks fit, on the matters covered by the applications received by it, after giving an opportunity of being heard to the applicant and to the Commissioner.

It is proposed to insert a new sub-section (6B) in section 245D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4).

It is further provided that a rectification which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

This amendment will take effect from 1<sup>st</sup> June 2011.

25. **Document Identification Number – SECTION 282B**

Considering the practical difficulties due to non-availability of requisite infrastructure on an all India basis, it is proposed to omit the aforesaid section.

This amendment will take effect retrospectively from 1<sup>st</sup> April 2011.

26. **Reporting of activities of Liaison Offices – SECTION 285**

Foreign companies or firms or associations of individuals operate in India through a branch or a liaison office after approval by Reserve Bank of India. The branch constitutes a permanent establishment of the foreign entity and is, therefore, required to file a return of income along with requisite details. A non-resident does not file a return of income with regard to its liaison office on the ground that no business activity is allowed to be carried out in India.

It is proposed to seek regular information from non-residents regarding the activities of their liaison offices in India. A new section 285 is, therefore, proposed, mandating the filing of annual information, within sixty days from the end of the financial year, in the prescribed form and providing prescribed details by non-residents as regards their liaison offices.

This amendment will take effect from 1<sup>st</sup> June 2011.

## WEALTH TAX

### 1. Power of the Settlement Commission to rectify its orders – SECTION 22D

The existing provisions of section 22D provide that the Settlement Commission may pass an order, as it thinks fit, on the matters covered by the applications received by it, after giving an opportunity of being heard to the applicant and to the Commissioner.

It is proposed to insert a new sub-section (6B) in section 22D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 22D(4).

It is further provided that a rectification which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

This amendment will take effect from 1<sup>st</sup> June 2011.

## CENTRAL SALES TAX

### 1. Amendment in ceiling rate – SECTION 15

Section 15 of the CST Act, 1956 prescribe restrictions and conditions in regard to taxation of declared goods. By clause (a) of section 15 it is provided that the rate of tax on declared goods should not exceed 4%. The said rate is proposed to be enhanced to 5%.

This amendment will take effect from the enactment of the Finance Bill.

## 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.

### Major proposals about customs duties are the following:

#### 1. General

- A. The First Schedule to the Customs Tariff Act, 1975 is being amended vide Clause 57 of the Bill to give effect to the tariff changes relating to the Union Customs Duties.
- B. The basic customs duty rates of 2%, 2.5% and 3% are being unified at the median rate of 2.5%.

#### Effective Dates

Particulars	Date from when effective
Legislative changes in Customs Laws	Date of Presidential assent to the Finance Bill, 2011
New Rates Of Customs duty	Immediately from 1 <sup>st</sup> March, 2011

#### 2. Sector Wise Changes in Custom Duty

##### A. Automobile Sector

Particulars	Change
Specified parts of the hybrid vehicles, namely, battery pack, battery chargers, AC/DC electric motors and motor controllers.	Full exemption from basic customs duty and SAD and concessional CVD @5% (by way of a central excise duty exemption). The concession is subject to actual user condition and will be available till 31.03.2013.
Import of spare battery packs for the electric vehicles by importers which are registered with the agencies notified for Central Financial Assistance (CFA) scheme of the Ministry of Non-conventional & Renewable Energy (MNRE).	Full exemption from basic customs duty and SAD and concessional CVD @5% (by way of a central excise duty exemption).



**B. Aviation**

Particulars	Change
Imports of aircrafts for non-scheduled operations.	Basic customs duty of 2.5% is being imposed, exemption from additional duty of customs (CVD) and special additional duty of customs (SAD) would continue.
Aircrafts	Exemption from education cess and secondary and higher education cess presently available is being withdrawn

**C. Capital Goods / Infrastructure**

Particulars	Change
Full duty exemption to Water supply projects for agricultural and industrial use.	Expanded to the water pumping station and water reservoir of such projects
Full exemption from basic customs duty and CVD currently available to 'Tunnel Boring machine' and parts thereof for hydro-electric power projects	Extended to such machines for highway development projects also.
Specified gems and jewellery machinery	Reduced from 7.5% to 5%
Cash dispensers and Parts required for the manufacturer of cash dispensers	Exempted from basic customs duty on actual user basis
Mailroom equipment compatible with High speed printing machinery imported by registered newspaper establishments.	Concessional import duty of 5% basic customs duty, 5% CVD & Nil SAD
Parts and components for manufacture of 23 specified high voltage transmission equipments.	Concessional rate of 5% basic customs duty, 5% CVD & Nil SAD
Bio-based asphalt sealer and preservation agent, millings remover and crack filler, asphalt remover and corrosion protectant and sprayer system for bio-based asphalt applications.	Fully exempted

**D. Electronics Hardware**

Particulars	Change
Parts of inkjet and laser-jet printers imported for manufacture of such printers.	A concessional import duty structure of 5% CVD and Nil SAD
Parts/components required for the manufacture of PC connectivity cable and sub-parts of parts & components	Fully exempted

of battery charger, hands-free head phones and PC connectivity cable of mobile handsets including cellular phones.	
Parts, components and accessories for manufacture of mobile handsets including cellular phones.	Full exemption from SAD extended upto 31.03.2012
Additional specified capital goods and raw materials for the manufacture of electronic hardware.	Fully exempted
Parts for manufacture of DVD writers, Combo drives and CD Drives subject to actual user condition.	A concessional import duty structure of 5% CVD and Nil SAD

**E. Environment Friendly and Energy Saving Goods**

Particulars	Change
LEDs used for manufacture of LED lights and light fixtures.	Concessional CVD @5% (by way of a central excise exemption) and full exemption from SAD.
Solar lantern or lamps	Reduced from 10% to 5%
Toughened glass and silver paste imported for manufacture of solar cells or solar modules on actual user basis	Fully exempt

**F. Food / Agro Processing / Agriculture**

Particulars	Change
Specified agricultural machinery such as paddy transplanter, laser land leveler, cotton picker, reaper-cum-binder, straw or fodder balers, sugarcane harvesters, track used for manufacture of track-type combine harvester etc.	Reduced from 5% to 2.5%
Parts and components required for the manufacture of equipment at (1) above.	Reduced from 7.5% to 2.5%
Micro-irrigation equipment	Reduced from 7.5% to 5%
Raw pistachios	Reduced from 30% to 10%
Sun-dried dark seedless raisins	Reduced from 100% to 30%
Cranberry products	Reduced from 30% to 10%
De-oiled rice bran oil cake	Exemption from Basic Custom Duty
Exports of de-oiled rice bran oil cake	Export duty of 10%

**G. Health Sector**

Particulars	Change
Endovascular stents	Fully exempted from basic customs duty of 5%.

Specified raw material for the manufacture of syringes, needles, catheters, cannulae on actual user basis.	A concessional import duty regime of 5% Basic customs duty, 5% CVD & Nil SAD.
P&P medicines imported for retail sale	Exemption from SAD
Customs duty on four specified life saving drugs and their bulk drugs	Reduced from 10% to 5% with Nil CVD (by way of excise duty exemption)
Lactose for use in the manufacture of homoeopathic medicines	Reduced from 25% to 10%.

#### H. **Metals**

Particulars	Change
Stainless steel scrap	Exemption from Basic custom duty
Terro-nickel	Basic customs duty reduced from 5% to 2.5%
Iron ores	Statutory rate of export duty is being increased from 20% to 30% while unifying the effective rate of export duty on iron ore fines and lumps at 20%.
Iron ore pellets	Fully exempted from the export duty
Copper dross, copper residues, copper oxide mill scale, brass dross and zinc ash	Exempted from levy of SAD
Basic customs duty on vanadium pentoxide and vanadium sludge	Reduced from 7.5% to 2.5%
Value of gold and silver contained in the copper concentrate	Exemption from basic customs duty

#### I. **Paper**

Particulars	Change
Waste paper	Reduced from 5% to 2.5%

#### J. **Precious Metals**

Particulars	Change
Gold dore bars of up to 80% gold purity imported for refining and manufacturing serially numbered gold bars in India.	Import duty of Nil basic customs duty, CVD of Rs.140 per 10 gram and Nil SAD

#### K. **Ship Repairs**

Particulars	Change
Benefit of exemption currently available to ship repair units on	Is being extended to such spares and consumables for repairs of ocean going

imports of spares and consumables required for repair of ocean going vessels	vessels by owners of such vessels registered in India
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**L. Special Economic Zone**

Particulars	Change
Only Goods produced or manufactured were exempted from ADC	All clearances from SEZ into DTA exempted from ADC if not exempted from State Value Added tax (including traded goods)
CVD exemption currently available to plastic material reprocessed in India out of the scrap or waste of goods falling under specified chapters	Exemption is being extended to domestic tariff area clearances of such plastic materials manufactured in SEZ units also

**M. Textiles**

Particulars	Change
Raw silk (not thrown) of all grades	Reduced from 30% to 5%.
Cotton waste	Exempted from basic custom duty
Poly Tetra Methylene Ether Glycol (PTMEG) and Diphenylmethane 4, 4-diisocyanate (MDI).	Reduced from 7.5% to 5% subject to actual user condition
Acrylonitrile	Reduced from 5% to 2.5%
Sodium Polyacrylate	Reduced from 7.5% to 5%
Caprolactum.	Reduced from 10% to 7.5%
Nylon chips, fibre & yarn	Reduced from 10% to 7.5%
Rayon grade wood pulp.	Reduced from 5% to 2.5%

**N. Miscellaneous**

Particulars	Change
Carbon black feed stock	Reduced from 5% to 2.5%
Petroleum coke.	Reduced from 5% to 2.5%
Mineral gypsum.	Reduced from 5% to 2.5%
Crude palm stearin for use in the manufacture of laundry soap on actual user basis.	Fully exempted

**O. Export Promotion**

- (i) The list of specified goods, allowed to be imported duty free for use in the manufacture of leather goods, for export is being expanded.
- (ii) The list of specified goods, allowed to be imported duty free for use in the manufacture of leather Garments is being expanded by including anti-theft devices like labels, tags and sensors therein.

- (iii) Description of some items is being changed in the list of items that are allowed to be imported duty free for manufacture of textile or leather garments and other leather goods for export.
- (iv) Benefit of duty free import on trimmings, embellishments, components etc. for manufacture of leather goods, footwear and textile garments is being extended to merchant exporters subject to certain conditions.
- (v) Specified tools used in the handicrafts sector are being included in the list of specified goods, allowed to be imported duty free to Handicrafts exporters.
- (vi) Full exemption from basic customs duty is being extended to fin fish feed.
- (vii) Basic customs duty on vannamei broodstock is being reduced from 30% to 10%
- (viii) Basic customs duty on bamboo used for manufacture of agarbattis is being reduced from 30% to 10%

**P. Scope of Exemption**

At present specified categories of works of art and antiquities are exempted from customs duty. The scope of the exemption is being expanded by including:

- (i) works or arts or antiquities for exhibition or display in private art galleries or similar premises that are open to general public;
- (ii) works of art created by an Indian artist abroad, irrespective of the fact whether such works are imported along with the artist or the sculptor on their return to India.

**Q. Special Provisions and Notifications**

- (i) Special provision is being made in the Finance Bill imposing definitive safeguard duty retrospectively on imports of caustic soda lye imported into India during the period 04.12.2009 to 03.03.2010
- (ii) Special provision is being made in the Finance Bill to retrospectively provide a concessional basic customs duty of 30% to fresh garlic imported by National Consumer Cooperative Federation and Madhya Pradesh State Cooperative Marketing Federation under import licenses issued by the Central Government and cleared after 15.01.2003.
- (iii) Certain notifications are being amended retrospectively to allow exports made under the EPCG scheme to simultaneously avail of benefits under Export Reward Schemes such as Served From India Scheme, Focus Market Scheme etc.

### 3. **Amendments in Customs Act, 1962**

- A. Section 2 is being amended to include 'self-assessment' within the definition of assessment'.
- B. Section 17 is being amended to replace the existing system of assesment with 'self-assessment' of duty on imported and export goods by the importer or exporter. The revised provisions empower customs officers to verify the self assessment and if required, reassess duty on the imported or export goods. It is being further provided that the officers may conduct audit in certain situations either in their own office or at the premises of the importer or exporter.
- C. Section 18 is being amended to make the provisions relating to provisional assessment of duty applicable in case an importer or exporter is unable to make self-assessment with the proposed scheme of 'self-assessment'.
- D. Section 19 is being amended to align the provisions relating to determination of duty where goods consist of articles liable to different rates of duty with the proposed scheme of 'self-assessment' under section 17.
- E. Sub-section (1) of section 27 is being substituted so as to enhance the time limit for claiming refund of duty and interest from six months to one year. This will bring uniformity for both demanding duty and claiming refund.
- F. Section 28 is being substituted so as to make the provisions more coherent and clear as also to harmonize the demand period in normal cases to one year.
- G. Section 28AA and 28AB are being substituted with a revised section 28AA so as to make the provisions relating to interest more coherent and clear.
- H. Section 46 is being amended to provide that an entry of imported goods shall be presented electronically and to empower the Commissioner of Customs to allow filing of entry in any other manner when it is infeasible to present electronically.
- I. Section 50 is being amended to provide that an entry of export goods shall be presented electronically and to empower the Commissioner of Customs to allow filing of entry in any other manner when it is infeasible to present electronically.
- J. Section 75 is being amended to enable the Central Government to prescribe circumstances under which drawback would not be disallowed even though the export remittances are not received within the period specified in the Foreign Exchange Management Act.
- K. Section 110A is being amended to empower the adjudicating authority to allow release of seized goods.

- L. Section 124 is being amended to provide for issuance of a show cause notice with prior approval of an officer not below the rank of an Assistant Commissioner of Customs.
- M. Section 131D is being inserted retrospectively with effect from 20.10.2010 to empower the Board to issue instructions relating to non-filing of appeal in certain cases in line with National Litigation Policy.
- N. A new section 142A is being inserted so as to create first charge on the property of the defaulter for recovery of the customs dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- O. Section 150 is being amended so as to provide that the balance of sale proceeds of unclaimed cargo sold in auction shall be paid to the Government when it cannot be paid to the owner within six months,
- P. Section 151A is being amended so as to empower the Board to also issue instructions to customs authorities on any other matters under the Customs Act or any other Act for the time being in force so far as they relate to prohibition, restrictions or procedure relating to import or export of goods.
- Q. Section 157 is being amended to empower the Board to prescribe regulations for specifying the manner of conducting audit at the office of the proper officer of customs or at the premises of the importer.

These legislative changes will come into effect on enactment of the Finance Bill.

#### 4. **Amendments in Customs Tariff Act, 1975**

- A. Section 3 is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 with effect from 01.03.2011.
- B. Section 9AA is being amended so as to enable the Central Government to reduce the anti-dumping duty imposed under the provisions of sub-section (1) of section 9A on an article or an importer where such importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty in excess of his actual margin of dumping.
- C. Customs Tariff (Identification, Assessment and Collection of Anti Dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995 is being amended so as to revise provisions of rule 23 so as to align the same with Article 11 of the WTO Agreement on anti dumping and also to insert Annexure-III containing principles to determine the non-injurious price

These legislative changes will come into effect on enactment of the Finance Bill.

5. **Amendments in the Schedules to the Customs Tariff Act, 1975**

- A. The First Schedule is being amended to include editorial changes in the Harmonized System of Nomenclature (HSN) in certain chapters, which would be effective from 01.01.2012.
- B. Description of heading 9804 in the First Schedule is being amended to cover all dutiable items intended for personal use, imported by post or air and to prescribe a tariff rate of 35% for tariff items under the heading.
- C. The Second Schedule is being amended so as to align the entries with the Harmonized System of Nomenclature (HSN) and introduce a new entry for de-oiled rice bran cake. The effective rates of export duty on all items other than iron ores lumps, fines and pellets; and de-oiled rice bran cake are being maintained

These legislative changes at (A) will come into effect on enactment of the Finance Bill



## EXCISE DUTY

Note: Changes come into effect immediately unless otherwise specified.

### **Major proposals about Central Excise duty are the following:**

1. **General** – The First Schedule to the Central Excise Tariff Act, 1985 is being amended vide clause 70 of the Finance Bill to give effect to Tariff changes relating to Union Excise duties.
2. **Proposals involving changes in rates of duty whether by amendment of tariff rates or by notification**
  - A. The concessional rate of excise duty of 4% is being increased to 5%. Accordingly, items such as prepared foodstuff like sugar confectionary, pastry and cakes; starches; paper and articles of paper; textile intermediates & textile goods; drugs; medical equipments etc would now be subject to the enhanced rate of duty of 5%.
  - B. An excise duty of 1% without Cenvat credit facility is being imposed on about 130 specified items, which were hitherto either fully exempt from excise duty or chargeable to nil rate of excise duty. General SSI exemption would be available to all products covered under this new levy.
  - C. A mandatory excise duty of 10% is being imposed on readymade garments and textile made ups bearing a brand name or sold under a brand name. General SSI scheme is also being extended to readymade garments and other textile made up articles. Duty shall be charged on the tariff value @ 60% of their retail sale price.
  - D. An excise duty of 5% is being imposed on automatic looms and projectile looms.
  - E. Exemption from excise duty available to clearances upto 3500 metric tonne of paper manufactured from non-conventional material is being withdrawn.
  - F. Full exemption from excise duty is being withdrawn on microprocessors for computer, other than motherboards; floppy disc drive; hard disc drive; CD-ROM drive; DVD drives/DVD writers; flash memory and combo drives meant for fitment inside the CPU or laptop. These goods will attract a concessional rate of excise duty of 5%.
3. **Sector Specific Relief Measures**
  - A. **Automobile**
    - (i) Concessional rate of excise duty @10% is being extended to factory built ambulances. Other vehicles retrofitted as ambulances subsequent to their removal from the factory shall continue to be eligible for refund based concession.

- (ii) The scope of the Taxi Refund Scheme is being extended to include vehicles carrying 13 persons including the driver.
- (iii) Concessional excise duty structure for taxis is being rationalized to provide refund of 20% of the excise duty paid on vehicles if they are registered as a taxi subsequent to removal.
- (iv) A definition for “Completely Knocked Down (CKD) unit” of a vehicle including two wheelers, eligible for concessional import duty, is being inserted to exclude from its purview such units containing a pre-assembled engine or gearbox or transmission mechanism or a chassis where any of such parts or sub-assemblies is installed
- (v) Full exemption from excise duty is being extended to parts of power tillers when cleared to another factory of the same manufacturer for manufacturing power tillers.

**B. Capital Goods**

- (i) Excise duty exemption is being extended to goods required for expansion of an existing mega /ultra mega power project under specified conditions at par with exemption from CVD on the import of goods for expansion of such projects.
- (ii) Excise duty is being reduced from 10% to 5% on parts of specified textile machinery.
- (iii) Full exemption from excise duty is being extended to specified part of sewing machines (other than those with in-built motors).

**C. Cement**

(i) **Mini Cement Plant:**

Cement cleared in packaged form

Particulars	Till 28-02-2011	From 01-03-2011
of RSP not exceeding Rs. 190 per 50 kg bag or Rs. 3800 per tonne;	Rs. 185 per tonne	10% ad valorem
of RSP exceeding Rs. 190 per 50 kg bag or Rs. 3800 per tonne	Rs. 185 per tonne	10% ad valorem + Rs. 30 per tonne

Cement Cleared Other than in packaged form

Particulars	Till 28-02-2011	From 01-03-2011
Cleared in other than packaged form	Rs. 215 per tonne	10% ad valorem

(ii) **Other than Mini Cement plant**

Cement cleared in packaged form

Particulars	Till 28-02-2011	From 01-03-2011
of RSP not exceeding Rs. 190 per 50 kg bag or Rs. 3800 per tonne;	Rs. 290 per tonne	10% ad valorem + Rs. 80 per tonne

of RSP exceeding Rs. 190 per 50 kg bag or Rs. 3800 per tonne	10% of RSP	10% ad valorem + Rs. 160 per tonne
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Cement cleared other than in packaged form

Particulars	Till 28-02-2011	From 01-03-2011
Cleared other than in packaged form	10% or Rs. 290 per tonne whichever is higher	10% ad valorem
Cement Clinker	Rs. 290 per tonne	10% ad valorem + Rs. 200 per tonne

**D. Environment Friendly And Energy Saving Goods**

- (i) A concessional rate of excise duty of 10% is being prescribed for hydrogen vehicles based on fuel cell technology.
- (ii) Excise duty is being reduced from 10% to 5% on hybrid kits for conversion of fossil fuel vehicles to hybrid vehicles. Parts of such kits would also attract 5% duty.

**E. Food / Agro Processing**

Full exemption from excise duty is being extended to –

- (i) Air-conditioning equipment, panels and refrigeration panels for installation of cold chain infrastructure for the preservation, storage, transport or processing of agricultural, horticultural, dairy, poultry, apiaries, aquatic and marine produce.
- (ii) Conveyor belt systems for use in cold storage for the preservation, storage, transport or processing of agricultural, horticultural, dairy, poultry, apiary, aquatic and marine produce and in mandis & warehouses for storage of food grains and sugar.

**F. Paper and Paper Board**

- (i) Cotton Stalk Particle boards are being fully exempted from excise duty.
- (ii) Concessional rate of 5% excise duty is being extended to corrugated boxes whether or not pasted with Duplex sheet on their outer surface.
- (iii) Excise duty is being reduced from 10% to 5% on greaseproof paper and glassine paper.

**G. Precious Metals**

- (i) Excise duty is being reduced on serially numbered gold bars, other than tola bars, made starting from the ore/concentrate stage in the same factory from 'Rs. 280 per 10 grams' to 'Rs. 200 per 10 grams'.
- (ii) Concessional excise duty rate of 'Rs. 200 per 10 grams' is being extended to serially numbered gold bars manufactured by refining of gold dore bar also.

- (iii) Excise duty of 'Rs. 300 per 10 gram' is being imposed on serially numbered gold bars, other than tola bars, manufactured during the process of copper smelting.
- (iv) Excise duty of 'Rs. 1,500 per Kg.' is being imposed on silver manufactured during gold refining starting from ore/concentrate stage or from gold dore bar or during the process of copper smelting.
- (v) Excise duty of 1% is being imposed on branded jewellery and branded articles of precious metals.

**H. Water Supply**

- (i) Full exemption from excise duty currently available to pipes required for delivery of drinking water from its source to the plant and from there to the first storage point is being extended to pipe fittings such as joints, elbows, couplings etc.
- (ii) Concessional rate of excise duty of 1% is being extended to water filters using pressurized tap water but without use of electricity and their replaceable kits

**I. Textiles**

- (i) A tariff rate of excise duty of 10% is being prescribed for jute yarn while it is being simultaneously exempted from excise duty.

**J. Miscellaneous**

- (i) Enzymatic preparations used in leather industry are being fully exempted from excise duty.
- (ii) Full exemption from excise duty (and hence from CVD on imports) is being provided to colour, unexposed cinematographic film in jumbo rolls of 400 feet and 1000 feet.

**4. AMENDMENTS IN CENTRAL EXCISE ACT, 1944:**

- A. Section 4A is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 with effect from 01.03.2011.
- B. Provisions of Section 11A, 11AA, 11AB and 11AC are being redrafted so as to make them more lucid and coherent. A new category of cases is being carved out in respect of which the period of limitation would be five years but which would attract general penalty of 50% of the duty. Waiver of show cause notice and conclusion of proceedings would be available if the duty along with interest and specified penalty is paid before the issue of show cause notice in such cases.
- C. A new section 11E is being inserted so as to create first charge on the property of the defaulter for recovery of central excise dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

- D. Section 12 is being amended to insert reference to section 3A with effect from the date of introduction of section 3A i.e. 10.05.2008.
- E. Section 12F is being inserted to empower the Joint Commissioner or the Additional Commissioner of the Central Excise to himself search or authorize a central excise officer to carry out the search of any premises.
- F. A new section 35R is being inserted retrospectively with effect from 20.10.2010 so as to empower the Board to issue instructions relating to non-filing of appeal in certain cases in line with National Litigation Policy.
- G. Section 38(2) is being amended to make its provisions applicable to notifications issued under section 5B also.

These legislative changes will come into effect on enactment of the Finance Bill.

#### 5. **AMENDMENTS IN THE SCHEDULES TO CENTRAL EXCISE TARIFF ACT, 1985**

- A. A tariff rate of 5% is being prescribed for specified items, which are being subjected to an effective rate of 1% excise duty without Cenvat credit facility.
- B. Chapter Note 5 of Chapter 15 is being amended to insert heading 1501, 1502, 1503, 1504, 1505 and tariff item 1516 1000 therein.
- C. A chapter note is being inserted in Chapter 22 so as to provide that in relation to products of this chapter, labelling or re- labelling of containers or packing or repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer, shall amount to manufacture.
- D. A chapter note is being inserted in Chapter 26 so as to provide that in relation to products of this chapter, the process of converting ores into concentrates shall amount to manufacture.
- E. Two chapter notes are being inserted in Chapter 63 so as to define the expression 'brand name' and to provide that affixing a brand name on the product, labelling or re-labelling of containers or packing or repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer, shall amount to manufacture.
- F. A chapter note is being inserted in Chapter 71 so as to provide that the process of refining of dore bar shall amount to manufacture.
- G. Tariff rate of excise duty is being increased from Nil to 10% on silver powder, silver unwrought and semi-manufactured silver in specified forms.

- H. A chapter note is being inserted in Chapter 72 so as to provide that in relation to products of this chapter, the process of galvanisation shall amount to manufacture.
- I. The First Schedule is also being amended to include editorial changes in the Harmonized System of Nomenclature (HSN) in certain chapters, which would be effective from 01.01.2012.
- J. The Third Schedule is being amended retrospectively to include certain specified goods, which were notified under section 4A. This change will come into effect on enactment of the Finance Bill.

6. **AMENDMENTS IN CENVAT CREDIT RULES, 2004:**

- A. Definition of exempt services has been amended to include services that are partially exempt and trading activities (with the condition of no credit availment).
- B. Following amendments have been made in the definition of “input services”:
  - (i) Certain services meant for personal consumption by employees have been specifically excluded.
  - (ii) Expression “activities relating to business” has been deleted from the definition.
  - (iii) Certain services used in building construction and laying down foundation for support of capital goods like construction of complex services and works contract services have been specifically excluded except under specific circumstances.
  - (iv) Certain services used in relation to motor vehicles like authorised service stations, general insurance services, etc. have been specifically excluded except under specific circumstances.
- C. Rule 3 is being amended retrospectively with effect from 18.04.2006 to provide that the credit of service tax paid under section 66A of the Finance Act, 1994 shall also be permissible. This change will come into effect on enactment of the Finance Bill.
- D. The availment of Cenvat credit by ship breaking units is being restricted to 85% of the additional duty of customs (CVD) paid at the time of importation of ships for breaking.
- E. Rule 4 (7) is being amended to provide for reversal of Cenvat credit in case any payment made towards an invoice of input service is received back.
- F. Rule 6 is being amended to:
  - (i) reduce the requirement of payment of 6% of the value of exempted services to 5%;

- (ii) provide an option to maintain separate accounts for inputs alone and reverse the amount of input services credit as per the allocation formula in rule 6 (3A).
  - (iii) provide that a payment made under this rule shall be treated as credit not availed for the purpose of an applicable exemption;
  - (iv) clarify the value of services in cases where the same is not clearly defined and tax is collected on a compounding or specific principle;
  - (v) (Rule 6(5) is being omitted).
- G. Rule 6(3B) is being introduced to provide that only 50% of the Cenvat credit availed will be available for utilization towards payment of service tax under 'Banking and other financial services' by a banking company and financial institution
- H. Rule 6(3C) is being introduced to provide that only 80% of the Cenvat credit availed will be available for utilization towards payment of service tax by the providers of life insurance service and management of investment under ULIP
- I. A new rule 6(6A) is being inserted to provide that the provisions of sub-rule (1), (2), (3) and (4) of the said Rule shall not apply to taxable services provided to SEZ Unit or Developer without payment of service tax.

**7. AMENDMENT IN MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) ACT, 1955:**

Explanation III of the Schedule is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 with effect from 01.03.2011.

The abovementioned legislative change will come into effect on enactment of the Finance Bill.

**8. ADDITIONAL DUTIES OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT, 1957:**

Sugar and textile items are being omitted from the schedule of the Additional Duties of Excise (Goods of Special Importance) Act, 1957

The abovementioned legislative change will come into effect on enactment of the Finance Bill.

## SERVICE TAX

### 1. Introduction of new Services in the Service Tax net

#### A. Services provided by air-conditioned restaurant having license to serve liquor:

The bill seeks to levy tax on Services provided by air-conditioned restaurant having a license to serve alcoholic beverages in relation to serving of food and/or beverage. The new levy is directed at services provided by high-end restaurants that are air conditioned and have license to serve liquor. It is not necessary that the facility of air-conditioning is available round the year. The abatement of 70% has been proposed. It has been clarified that service tax will not be levied on sale by way of pick-up or home delivery.

#### B. Short Term Accommodation:

The bill seeks to levy tax on short term accommodation provided by hotels, inns, guest houses, clubs and others and at camp-sites where declared tariff is Rs. 1,000 or higher per day. This service is proposed to be taxed where the continuous period of stay is less than 3 months. The abatement of 50% has been proposed.

The relevant notification for the above two amendments would be issued after the enactment of the Finance Bill.

### 2. Scope of certain existing taxable services extended or altered

#### A. Authorized Service Station's Services:

The scope of 'Authorized Service Station Service' is being expanded to –

- (i) Include service provided **by any person** (earlier Service Tax was levied on services provided or to be provided by an authorized service station only);
- (ii) Cover all motor vehicles other than those meant for goods carriage and three wheeler scooter, auto rickshaws; and
- (iii) Also covers the service of decoration and similar services.

#### B. Life Insurance business:

The scope of the "Life Insurance Service" is being widened to cover all services provided to a policyholder or any person by an insurer, including re-insurer carrying on life insurance business. It is also being provided that tax shall be charged on the portion of the premium other than what is allocated to investment when the break-up of premium is shown separately in any document given to the policyholder. In case break-up is not indicated in any document issued to the policy holder, option to pay tax at 1.5 % (at present 1%) on gross amount of premium is provided.

#### C. Commercial Training or Coaching Service:

The Definition of "Commercial training or coaching centre" is being amended to bring all un-recognised courses within its net irrespective of the fact that such course are conducted by an institute which also conduct courses which may lead to grant of a recognised degree course.



Suitable exemption is proposed to be given to pre-school coaching and to training relating to educational qualifications that are recognized by law. Exemption announced to be introduced post enactment of the Finance Bill.

D. Club or Association:

Services provided by a club or association to its members are already subjected to tax since 2005. Now, the scope of service is being expanded to include service provided to non members within its ambit.

E. Business Support Service:

The scope of the service is being expanded to include operational or administrative assistance of any kind. The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves but sometimes find it economical or otherwise worthwhile to outsource.

The words “operational and administrative assistance” have a very wide scope and can include certain services which are already taxed under some other taxable category. In such cases, the classification shall be governed by Section 65A chapter V of Finance Act, 1994.

F. Services by legal professionals:

Earlier services provided by a firm of lawyers to any individual and legal representational services like appearing in court of law for a client were not taxable. But the scope of the existing service is being expanded to include:

- (i) Services of advice, consultancy or assistance provided by a business entity to individuals as well;
- (ii) Representational services provided by any person to a business entity; and
- (iii) Services provided by arbitrators to business entities.

Services provided by individuals to other individual will remain outside the levy. Further representation services provided by a business entity to an individual are also not taxable.

The Effective for the above mentioned proposals from a date to be notified after the enactment of the Bill.

G. Health services:

The existing service is being substituted with a new description to expand the levy as follows, with 50% abatement:

- (i) All services including diagnostic service provided by a centrally air conditioned (wholly or partially) clinical establishment having more than 25 beds of in-patient treatment during any part of the year;
- (ii) Diagnostic service being provided by a clinical establishment with the aid of laboratory or other medical equipment; and

- (iii) Service provided by a doctor not being an employee of a clinical establishment from the premises of such establishment. However, exemption is being provided to an establishment under the ownership of Government or Local Authority.

**3. Point of Taxation Rules, 2011:**

- A. “Point of taxation” defined as the point in time when “service shall be deemed to have been provided”
- B. These rules determine the point in time when the services shall be deemed to be provided. The general rule will be that the time of provision of service will be the earliest of the following dates:
  - (i) Date on which service is provided or to be provided;
  - (ii) Date of invoice; and
  - (iii) Date of payment
- C. Payment of service tax on accrual basis instead of cash basis. Consequent to introduction of Point of Taxation Rule 2011, service tax rules have been amended to alter the payment of service tax from receipt of payment to provision of service and also to permit adjustment of tax when services are not finally provided.
- D. In case of advance received, the Point of taxation is date of advance received.

**4. Exemption granted to certain services:**

The following exemptions would be effective immediately unless specified otherwise:

- A. Exemption is being provided to services provided by an organizer of business exhibition in relation to business exhibition held outside India. (Notification No. 5/2011 – Service Tax dated 1st March, 2011);
- B. An abatement of 25% from the taxable value is being provided for the purpose of levy of service tax under transport of goods through coastal and inland shipping (Notification No. 16/2011 – Service Tax dated 1st March, 2011);
- C. Exemption is being provided to “works contract” service provided for construction or finishing of new residential complex under “Jawahar Nehru National Urban Renewal Mission” and “Rajiv Awaas Yojana” (Notification No. 6/2011 – Service Tax dated 1st March, 2011);
- D. Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India is being exempted from service tax. (Notification No. 8/2011 – Service Tax dated 1st March, 2011) (w.e.f. 1<sup>st</sup> April, 2011);

E. A modified scheme is being introduced to refund service tax to SEZ units and developers and notification No 9/2009-ST is being superseded. In the modified scheme “wholly consumed” services are being defined in the notification in order to extend ‘outright exemption’ and to permit refund of all other services on a proportionate basis. (Notification No. 17/2011 – Service Tax dated 1st March, 2011. The features of the said notification are as follows:

- (i) Criteria for the determination of “wholly consumed” services have been laid down in the notification, borrowing from the Export of Services Rules, 2005. It has also been specified that all services received by an entity in a SEZ, which does not have any other DTA operations, will constitute “wholly consumed” services.
- (ii) No service tax is required to be paid ab-initio if the same are meant to be “wholly consumed” within SEZ, including services liable to tax on reverse charge basis under section 66A.
- (iii) Refund of the remaining services i.e. which are not wholly consumed shall be available on pro rata basis i.e. ratio of SEZ turnover to total turnover.
- (iv) Suitable rule has been introduced in Cenvat Credit Rules, 2004 to waive the requirements of rule 6 in case of services provided, without payment of tax, to a SEZ unit for its authorized operations.

## 5. **Withdrawal or Amendments of Exemption:**

A. The rates of service tax on travel by air are being revised as follows:

Type of Travel	Class of Travel	Service Tax
Domestic travel	Economy	From Rs.100 to Rs.150
Domestic travel	Other than Economy	From Rs.500 to Rs.750
International travel	Economy	10% (Standard rate)

The above changes will come into effect from 01.04.2011.

B. Exemption from service tax on the membership fees under ‘Club or association service’ is being given to the associations or chambers representing industry or commerce for the period from 16.06.2005 to 31.03.2008. The relevant notification for the same would be issued after the enactment of the Finance Bill.

C. Retrospective effect is being given to notification No.20/2009-ST dated 07.07.2009 exempting service tax on inter-State or intra-State transportation of passengers in a vehicle bearing Contract carriage permit or a tourist vehicle permit for the period from 01.04.2000 to 06.07.2009. The relevant notification for the same would be issued after the enactment of the Finance Bill.

## 6. **Amendments in Rules:**

A. Amendments in Service tax Rules, 1994

- (i) Issue of invoice/bill/challan to be within 14 days of date of “provision of service” (previously reference was to date of completion of service);

- (ii) Proviso in relation to requirement of raising invoice within 14 days for continuous services has been deleted, in view of introduction of the Point of Taxation Rules, 2011;
- (iii) The monetary limit of Rs. 1,00,000 for adjustment of excess amount paid under rule 6(4B)(iii) of the Service Tax Rules 1994 is being raised to Rs. 2,00,000;
- (iv) A new rule 5B has been introduced to provide that the applicable rate of tax shall be the rate prevailing at the time when the services are deemed to have been provided;
- (v) It has also been provided that when an invoice has been issued or a payment received for a service which is not subsequently provided, the assessee may take the credit of the service tax earlier paid when the amount has been refunded by him to the recipient or by the issue of credit note, as the case may be.
- (vi) The composition rate in sub-rule 7B of rule 6 applicable to in relation to purchase or sale of foreign currency, including money changing, has been reduced from 0.25% to 0.1% and the Proviso has been deleted. Thus, in the case of these services, option of paying service tax on billed charges will not be available.

B. Amendments in Export Service Rules,2006:

- (i) Export of Service Rules, 2005 and Taxation of services (provided from outside India and received in India) Rules 2006 are being amended so as to move some of the specified services from one category to another.

The change is effective from 1<sup>st</sup> April, 2011. (Notification No. 12 & 13/2011 – Service Tax dated 1st March, 2011).

Certain services have been re-grouped in the export/ import of services rules which are as follows:

- a. Preferential Location services offered by builders has been shifted from customer location based criteria to immovable property criteria;
- b. Following services have been shifted from the performance based criteria to location based:
  - Credit Rating Agency;
  - Goods Transport Agency;
  - Market Research Agency
  - Opinion Poll Agency;
  - Technical Testing and analysis;
  - Transport of Goods by air; and
  - Transport of Goods in containers by railways;

- c. Following Services have been shifted from Location based criteria to performance based:
  - Rail Travel Agent; and
  - Health/Hospital Services

C. Amendments in Import Service Rules, 2006:

Import Rules have also been amended. Amendments similar to the ones made in Export rules are made in import rules. However specific exemptions have been provided in relation to transportation between two locations outside India and for air freight which has been included for the purpose of customs valuation.

D. Amendments in Service Tax (Determination of Value) Rules, 2006:

The proposed amendments with the respect to value of money changing service are as follows:

- (i) For a currency exchanged either from or to Indian rupees, shall be equal to the units of currency exchanged multiplied by the difference in the buying rate or the selling rate as the case may be and the RBI reference rate for that currency.
- (ii) In case RBI reference rate is not available, the value of taxable service would be 1% of the gross amount of Indian rupees provided or received.
- (iii) When neither of the currency exchanged is an Indian rupee, than the value of the 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian rupee on that day.

E. Amendments in Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007:

A new sub-rule (2A) is being added in rule 3 in the rules vide Notification 1/2011-ST so as to restrict the CENVAT credit to 40% of the tax paid on services relating to erection, commissioning & installation; commercial or industrial construction and construction of residential complex, in case tax has been paid on full value of the service after availing CENVAT credit on inputs i.e. without availing exemption notification 1/2006-ST dated 01.03.2006. This has been done to ensure that the credit on inputs is not availed of indirectly while availing of the composition scheme.

F. Amendments to Cenvat Credit Rules, 2004:

A number of changes have been brought about in Cenvat Credit Rules, 2004 (Notification 3/2011-CE (NT)). Important changes relating to Service Tax are as under:

- (i) Eligible Input & Input Services are redefined;
- (ii) A practical scheme for the segregation of Cenvat credits used in respect of final products and output services where they are partially exempted with condition that no such credits shall be taken is provided;

- (iii) Rule 6(5) which allows full credit on specified services is deleted;
- (iv) Introduction of new Rule 6A to allow provision of services without payment of service tax to a unit in a SEZ or to a developer in SEZ for their authorized operations, without requirement of reversal of any CENVAT credit on this account;
- (v) Most of the Cenvat changes will come into effect from 01.04.2011 except a few that will be effective from 01.03.2011.

## 7. **Amendments in Finance Act**

### A. Penalty for delay in filing return of service tax:

The maximum penalty for delay in filing of return is proposed to be increased from Rs. 2,000 to Rs. 20,000. However, the existing rate of penalty for the first 15 days and for subsequent 15 days as well as the daily penalty of Rs. 100 per day thereafter is being retained without any change.

### B. Interest for delayed payment of service tax:

Interest rate for delayed payment of service tax is being increased from 13% to 18% per annum, effective from 01.04.2011 (Notification 15/2011-ST). A concession of 3% has been proposed in the Bill for tax-payers whose turnover during any of the years covered in the notice or the preceding financial year is below Rs. 60 lakh.

### C. Penalty for contravention of provision:

The maximum penalty under section 77 for contravention of various provisions is proposed to be increased from Rs. 5,000 to Rs. 10,000. However, the daily rate of penalty wherever applicable, is being retained.

### D. Penalty in case of fraud, collusion etc. :

The provisions of section 73(1A) and both the Proviso of section 73(2) are proposed for deletion. As a result, the benefit of reduced penalty shall not be available in cases of fraud, mis-statement, suppression, collusion etc. in the ordinary course.

However, revised benefit will be available under the new sub-section 4A of section 73 in situations where the true and complete account of transactions is otherwise available in the specified records and the assessee during the course of audit, verification or investigation pays the tax dues, together with interest and the reduced penalty.

It is clarified that the assessee can also avail this benefit on his own also. The extent of penalty is being further reduced to 1% per month of the tax amount for the duration of default, with an upper ceiling of 25% of the tax amount.

### E. Penalty for suppressing value of taxable service:

Penalty under Section 78 is being altered from upto twice the amount of tax to an amount equal to the tax. Moreover, in situations where the taxpayer has captured

the true and complete information in the specified records, penalty shall be 50% of the tax amount. The latter penalty (only) shall be further reduced to 25% if the tax dues are paid within a period of one month together with interest and reduced penalty. For assesseees with turnover upto Rs. 60 lakh the period of one month shall be increased to ninety days.

- F. Power to issue search warrant under section 82 is proposed at the level of Joint Commissioner and the execution of search warrant at the level of Superintendent.
- G. Provisions relating to prosecution are proposed to be reintroduced under section 89 and shall apply in the following situations :
  - (i) Provision of service without issue of invoice;
  - (ii) Availment and utilization of Cenvat credit without actual receipt of inputs or input services;
  - (iii) Maintaining false books of accounts or failure to supply any information or submitting false information;
  - (iv) Non-payment of amount collected as service tax for a period of more than six months.

## SECTORAL IMPACT

### Automobile

### Neutral

- The launch of “National Mission for Hybrid and Electric Vehicle”.
- Under the above, concessional excise duty of 10% for vehicle based on fuel cell technology, hybrid, electric cars.
- The extensions and enhancement of interest subvention of on crop loans from 2 to 3%, revision of wage rates under the NREGA scheme and continued focus on rural development will have a marginally positive impact on rural two-wheeler and tractor sales.
- Concessional rate of excise duty @ 10% extended to factory built ambulance.
- Duty on “Completely Knocked Down” vehicles will make imported vehicles more expensive, which may boost domestic sales.

### Aviation

### Negative

- Service tax on domestic and international travel increased by Rs. 50 and Rs. 250 respectively.
- Additional 10% tax to be levied on travel by higher classes on domestic airlines, bringing it at par with its international counterparts.

### Banking & Finance

### Positive

- Proposed introduction of the banking license to the private players is likely to increase the competition in the sector, which will benefit the end consumer.
- Infusion of corpus of Rs. 60,000 million and Rs. 5,000 million to Public Sector Bank and Regional Rural Bank respectively to help them maintain CRAR at 8% and 9% respectively.
- Housing loan limit under priority sector would be enhanced from Rs. 2 million to Rs. 2.5 million.
- Limit for interest rate subvention of 1% on home loans would be increased from Rs. 1 million to Rs. 1.5 million, for houses priced below Rs. 2.5 million. This measure is expected to assist banks in accomplishing their priority sector lending target and lower lending rate for borrowers.

### Cement

### Negative

- Proposed replacement of existing excise duty rates with a 10% ad valorem rate and an additional Rs. 160 per tonne of cement.
- Reduction in custom duties for Gypsum and Petcoke (raw material) from 5% to 2.5%.
- However reduction in input cost by reducing custom duty on Gypsum and Petcoke, is offset by move to charge excise duty on ad valorem duty.

### Construction

### Neutral

- An increase in the foreign institutional investment (FII) limit by \$20 billion for investment in corporate infrastructure bonds.
- Government undertakings like Indian Railway Finance Corporation have been allowed to issue tax-free bonds totalling Rs. 300 billion.



- Allocation for Bharat Nirman has been increased by 20% in 2011-12.
- IIFCL's loan disbursal target has been set higher from Rs. 200 billion to Rs. 250 billion.
- The additional tax exemption of Rs. 20,000, u/s 80CCF is extended to 2011-12 also.
- However these proposals are expected to address the funding needs of the infrastructure segment, and could lead to a faster take-off of infrastructure projects, but these may not push up the bottomlines of construction companies. Hence, we believe that the impact of the budget on the construction sector is neutral.

### **Fertilizers**

### **Positive**

- Budgetary allocations towards the agricultural sector, in the form of higher agricultural credit, subvention of interest on timely repayment of farm loans and a continued emphasis on expansion of the Green Revolution in eastern states are expected to increase fertiliser demand.
- With a view to encourage capacity expansions, government has provided tax benefits similar to infrastructure sub-sectors to fertilisers. Companies will also enjoy investment-linked deductions on their tax liabilities.
- Directly transfer of cash subsidy to farmers living below the poverty line by March 2012.

### **FMCG**

### **Positive**

- Rural demand in FMCG products is expected to increase due to rise in credit flow and enhancement of interest subvention to farmers.
- The Warehousing (Development and Regulation) Act, 2007 enacted in September 2007 for the development and regulation of warehouses, negotiability of warehouse receipts, etc and for connected or incidental matters has come into force with effect from 25 October 2010.
- To address the problem of shortage of storage capacity in short run, FCI has announced a new scheme of guaranteed hiring of private godowns for one year with preservation and maintenance of foodgrains.

### **Hotels**

### **Negative**

- Levy of 5% Service tax on hotel charging Rs. 1,000 or more per day for accommodation.
- Levy of 3% Service tax on air-conditioned restaurant serving liquor.

### **Healthcare**

### **Negative**

- Levy of 5% Service tax on all service provided by air-conditioned hospitals with 25 or more beds.
- Bringing diagnostics test under service tax net to affect the overall revenue of the health care providers or make it expensive for individuals.

### **Information technology**

### **Negative**

- No extension of fiscal benefits under the STPI scheme for export of Software Services.

- Proposal to bring SEZ units under the purview of the Minimum Alternative Tax (MAT).
- 24% increase in planned allocation for school education, is likely to boost opportunities for the IT - Education companies.

### **Media & Entertainment**

**Neutral**

- Colour, unexposed jumbo rolls of 400 and 1,000 feet are fully exempt from excise duty.
- Mailroom equipment would also benefit from the concessional basic customs duty of 5% and CVD of 5%, available to for high speed newspaper printing presses.
- A concessional import duty structure of 5% CVD and Nil SAD has been prescribed on parts for manufacture of DVD writers, combo drives and CD drives, subject to actual user condition

### **Metal & Mining**

**Neutral**

- Unification of export duty for all types of iron ore to an ad valorem rate of 20% can severely hurt companies which are export oriented.
- However exemption of export duty on value added products like iron ore pellets could see an increase in export.

### **Oil & Gas**

**Neutral**

- No issue of oil bonds.
- Direct transfer of cash subsidies on LPG and Kerosene to people living below poverty line.
- This will gradually reduce the under recoveries of oil marketing companies.
- Rs. 237 billion provided towards government share in under recoveries, which is significantly lower than the revised estimates of Rs. 386 billion for 2010-11.
- In October 2010, NELP IX was launched inviting bids for licensing of 34 exploration blocks, of which 15 are for offshore blocks and 19 for onshore blocks. The blocks are expected to be awarded in 2011.

### **Paper**

**Positive**

- Increase in excise duty on W&P paper and industrial paper from 4% to 5%.
- Reduction of custom duty on waste paper from 5 to 2.5%.
- Hence 1% increase in excise duty will be offset by reduction in custom duty, which will benefit the W&P players.

### **Pharmaceuticals**

**Neutral**

- Allocation to health ministry is increased by 20%, hence no specific announcement for the sector made.
- Increase in excise duty by 1% on formulation, will have no significant impact on the industry.
- Applicability of MAT on SEZ units will have adverse impact on Pharma Companies that were claiming such SEZ unit benefit.

## **Ports Infrastructure**

**Positive**

- Increase in allocation of funds for infrastructure and enhanced limit up to Rs. 50 billion, of tax free bonds for the ports sector, will facilitate improved fund availability for the development of port projects.
- Proposal to create SPV's in the form of notified infrastructure debt funds and tax exemption on their income will attract more foreign funds to the ports sector.

## **Power Generation**

**Positive**

- Sun set date for tax holiday under section 80IA for the sector has been extended by another year to March 31, 2012, which will encourage investments.
- Exemption of excise duty on capital goods required for expansion of mega and ultra power projects is positive development.

## **Roads & Highways**

**Positive**

- The Union Budget is aimed at improving fund availability for the infrastructure sector. A large portion of these funds is expected to flow into the roads sector.
- The National Highway Authority of India has been allowed to issue tax-free bonds totalling Rs. 100 billion as against the earlier Section 54EC capital gain bonds.
- The foreign institutional investment limit for investment in corporate infrastructure bonds has been raised by \$20 billion, which is expected to lead to a better mopping up of bond issues.
- IIFCL's loan disbursement target has been set at Rs. 250 billion for 2011-12 from an estimated Rs. 200 billion in 2010-11.
- The additional tax exemption of Rs. 20,000 provided in 2010-11, on investment in long-term infrastructure bonds has been extended to 2011-12.

## **Sugar**

**Neutral**

- The basic customs duty for sugarcane harvesters, which was reduced from 7.5% to 5.0% in the previous budget, has been reduced further to 2.5%. This is expected to result in moderate cost savings for farmers.

## **Telecom**

**Neutral**

- Increase in MAT from 18% to 18.5% and reduction in surcharge levied from 7.5% to 5% will neutralise the impact of the increase in MAT.
- The exemption from basic, CVD and SAD on components and accessories of mobile handsets has been extended for the next financial year.

## **Textile**

**Negative**

- A mandatory excise duty of 10% is being imposed on branded readymade garments (RMG) and textile made-ups which will affect a lot of small and job work companies.
- Yarn and fabric manufacturers may have to pay an increased excise duty at 5% vis-à-vis an optional and concessional 4% duty paid earlier.
- Reduction in customs duty on Acrylonitrile and rayon grade wood pulp, from 5% to 2.5%, will benefit acrylic and viscose fibre manufacturers respectively by reducing their raw material costs.

## **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 :

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