Budget India, 2011

Tax Proposals

February 28, 2011

KALYANIWALLA & MISTRY

CHARTERED ACCOUNTANTS

INCOME TAX ACT:

Changes in Income Tax Slabs:

Particulars	Old Tax Slabs A.Y. 2011-12	New Tax Slabs A.Y. 2012-13	Tax Rate
For Individual, HUF	Upto Rs. 160,000*	Upto Rs. 180,000**	Nil
	Rs. 160,001 to Rs. 500,000	Rs. 180,001 to Rs. 500,000	10%
	Rs. 500,001 to Rs. 800,000	Rs. 500,001 to Rs. 800,000	20%
	Above Rs. 800,000	Above Rs. 800,000	30%

* For Woman – Rs. 190,000
For Senior Citizen – Rs. 240,000

** For Woman – Rs. 190,000
For Senior Citizen – Rs. 250,000

The qualifying age for Senior Citizens, being resident in India, is reduced from 65 years to 60 years from Assessment Year 2012-13 onwards.

A new category of assessees has been introduced, which provides that every individual, being a resident in India, who is of the age of eighty years and above is eligible for a basic exemption limit of Rs.5,00,000/-. The new tax rates for such assessees are as under.

Tax Slabs A.Y. 2012-13	Tax Rate
Upto Rs. 500,000	Nil
Rs. 500,001 to Rs. 800,000	20%
Above Rs. 800,000	30%

Change in rate of Surcharge:

Presently, surcharge @ 7.5% is levied on Income Tax of domestic companies having total income above Rs. 1 crore. The said surcharge is proposed to be reduced from 7.5% to 5%. Further, surcharge @ 2.5% is levied on Income Tax of companies other than domestic companies i.e. foreign companies, having total income above Rs. 1 crore. The said surcharge is proposed to be reduced from 2.5% to 2%.

Amendment to definition of "Charitable Purpose"

If any charitable trust formed for the advancement of any object of general public utility carries on any activity in the nature of or renders any service in relation to trade, commerce or business for a fee or consideration, then the activities of the trust are not for a charitable purpose. Such trust could however enjoy the benefits if the income from such activities was less than Rs.10 lacs in the previous year. Such monetary limit is proposed to be revised to Rs.25 lacs per year. The new limit is proposed to be effective from April 1, 2012.

Insertion of new section in respect of income derived by Infrastructure Debt Fund - Section 10(47) of the Act

It is proposed that any income received by an infrastructure debt fund which is set up in accordance with the guidelines as may be prescribed and which is notified by the Central Government will be exempt from tax.

Amendments in section 35 - Weighted deduction for research association

Section	Description	Existing Weighted Deduction	Proposed Weighted Deduction
35(2AA)	Sum paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme.	175%	200%

Section 35 AD – Deduction in respect of expenditure on specified business:

It is proposed to include two new businesses as 'specified business" i.e

i. the business of developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government and notified by the Board, which starts functioning after April 1, 2011 and;

ii. Production of fertilizer in India in a new plant or in a newly installed capacity in an existing plant, which starts functioning after April 1, 2011.

Amendment to Section 36 – Other deductions:

Deduction is available to an employer, of an amount contributed by him to the New Pension Scheme notified by the Central Government. The deduction cannot exceed 10% of the salary of the employee.

Amendment to sunset clause in sections 80-IA(4) and 80-IB(9)

It is proposed that the time limit for availing the deduction under section 80-IA(4) in respect of units set up in the power sector has been extended to March 31, 2012 as against the existing time limit of March 31, 2011. Similarly, there was no sunset clause in respect of availing the deduction under section 80-IB(9) in respect of units engaged in commercial production of mineral oil. It is proposed that the aforesaid deduction available for commercial production of mineral oil will not be available for blocks licence under a contract awarded after March 31, 2011 under the New Exploration Licencing Policy.

Amendment to section 92C

Under the existing provisions in the cases where the variation between the arms length price as determined by the assessee and the price at which the international transaction has actually been undertaken does not exceed 5% of the international transaction, the same were considered to be at arms length price.

It is proposed to delete the limit of 5% and the same is proposed to be replaced by such percentage as may be notified by the Central Government in the Official Gazette. The amendment will be applicable from April 1, 2012.

Amendment to section 92CA

Under the existing provisions of section 92CA the Transfer Pricing Officer (TPO) was allowed to verify only those international transactions which were referred to him/her by the Assessing Officer.

It is now proposed that the TPO can verify any international transaction entered by the assessee with its associated enterprise, which comes to his knowledge during the course of the assessment proceedings, even if the transaction was not referred to him/her by the Assessing Officer.

Insertion of new section 94A

The Central Government shall notify any country or territory outside India as a notified jurisdictional area with whom an agreement for effective exchange of information is not entered into by India. Where an assessee enters into any transaction with a person located in the notified jurisdictional area then such person shall be deemed to be an associated enterprise and accordingly, transfer pricing regulations shall apply to such transaction.

No deduction in respect of any payment to a financial institution situated in the said area will be allowed unless the assessee furnishes an authorisation permitting the tax authorities to seek relevant information from such institution. Similarly, no deduction in respect of any expenditure or allowance in respect of any transaction with a person situated in such area will be allowed unless the assessee maintains the prescribed documents. In addition thereto, if any money is received by any assessee from a person situated in such area, then the onus is on the assessee to explain the source of money, failing which, the remittance would be treated as the income of the assessee.

It is further provided that any payments made to a person located in the notified jurisdictional area, which are subject to deduction of tax, shall be liable to deduction at the highest of the following rates:

i. At the rate or rates in force,

ii. At the rate specified in the relevant provisions of the Act,

iii. At the rate of thirty percent

Amendment to section 115A

Interest derived by a non-resident from an infrastructure debt fund will be chargeable to tax @ 5%.

Insertion of new section 115BBD - Taxation of foreign dividend

Dividend received by an Indian company from its foreign subsidiary shall be subject to tax at the rate of 15% as against existing rate of 30%. No deduction shall be allowed in respect of any expenditure incurred for earning such dividend income.

Amendment to Section 115JB – Increase in Minimum Alternative Tax:

It is proposed that w.e.f. Assessment Year 2012-13, the Minimum Alternative Tax (MAT) on Companies be increased from 18% to 18.5%.

Provisions of section 115JB are made applicable to a business carried by an entrepreneur or a developer in a unit or a Special Economic Zone.

New Chapter introduced Chapter XII-BA – Special Provisions Relating to Certain Limited Liability Partnerships (LLP)

If regular income tax payable by an LLP is less than 18.5% of the adjusted total income, MAT @ 18.5% of the adjusted total income is payable.

Adjusted total income = Total income as computed as per the provisions of the Income tax Act before granting any deductions under Chapter VIA under the heading C (sections 80 HH to 80 RRB) and section 10AA.

Credit shall be available for excess of MAT paid over regular tax payable. Such credit can be carried forward for ten assessment years and can be set off in a year, when tax is payable on regular income, Set off is available to the extent of the excess of regular tax payable over the MAT.

Amendment to section 115-R

Any income distributed by a debt fund or a liquid fund to any person being an individual or Hindu undivided family, shall be subject to dividend distribution tax @ 25%.

Income distributed to any person not being an individual or a Hindu undivided family shall be subject to dividend distribution tax @ 30%.

Amendment to section 139

In case of the assessee, being a Company, where a transfer pricing report as referred to in section 92E is to be furnished, the due date of filing returns has been extended to November 30 of the Assessment Year. The amendment is proposed to take effect from Assessment Year 2011-12.

It is proposed that in case of an individual assessee having income only from Salary, a scheme shall be announced whereby the employee is not required to file his return if the employer has deducted tax at source and has duly deposited the same to the credit of the Central Government and reports the same in the prescribed format.

Insertion of Section 194 LB- TDS on Income by way of interest on Infrastructure Debt Fund

Where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure fund referred to in the newly inserted Section 10(47), shall be liable for TDS @ 5% w.e.f June 1, 2011, at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier,

Insertion of new section 285 – reporting of activities of the liason office.

It is proposed that a non-resident having a liaison office in India as permitted by Reserve Bank of India shall within sixty days from the end of the financial year, file a statement of its activities in the prescribed format with the Assessing Office having jurisdiction.

SERVICE TAX

INTRODUCTION OF NEW SERVICES / EXPANSION OF EXISTING SERVICES

The following new services have been introduced

- Services provided by air conditioned restaurants having license to serve in relation to serving of food and/ beverages.
- Short term accommodation provided by a hotel in guest house/ club/ campsite/ any other similar establishment for a continuous period of less than 3 months.

Scope of certain existing services has been expanded or altered as follows:

- **Life insurance service** includes **all services** provided to a policy holder or any person by an insurer, including re-insurer carrying on life insurance business.
  The service tax shall be charged on the portion of the premium other than what is allocated for investments, when such break up of such premium is shown separately in the document. The composite rate increased from 1 to 1.5%.

- **Club or association services**: services provided to non members are now included

- **Authorised service station services**: will now include services provided by any person. However, it will not include vehicles meant for goods carriage and three-wheeler scooter auto rickshaw but includes decoration services.

- **Business support services**: will now include services provided by way of operational or administrative assistance in any manner.

- **Legal services:**
  a. Services provided by a business entity in relation to advise, consultancy or assistance in any branch of law.
  b. Representational services by any person to any business entity are now covered.
  c. Representations to individuals will continue to be exempt
  d. Services of "arbitration" provided by an arbitral tribunal to any business entity.

- **Commercial coaching or training services** –all unrecognised courses are now covered

- **Health services**:-
    a. All services including diagnostic services provided by centrally air conditioned (wholly or partly) clinical establishment having more than 25 beds for in-patient treatment during any part of the year
    b. Diagnostic services provided with aid of laboratory or other medical equipment
    c. Service provided by a doctor from a clinical establishment irrespective of him being an employee of the same

EXEMPTIONS FROM SERVICE TAX WITH IMMEDIATE EFFECT

- Business exhibition service - Service provided by organiser in relation to business exhibition held outside India will be exempt.
- Abatement of 25% from the taxable value of the service provided under 'transport of goods through coastal and inland shipping'
- Exemption in respect of Works contract service provided for construction or finishing of new residential complex under 'Jawarhlal Nehru National Urban Renewal Mission' and 'Rajiv Awaas Yojna'
- Services provided within a port or other port or any airport under Works Contract service for specified services is exempt.
- 'Services provided to 'Rashtriya Swasthya Bima Yojana' under General Insurance.
- Modified scheme for refund of service tax to SEZ units and developers which will superceed the earlier notification

EXEMPTIONS FROM SERVICE TAX W.E.F. APRIL 1, 2011

- Transport of Goods by Air Services – Assessable Value of goods for the purpose of Customs Duties is to be excluded from the taxable value for the purpose of levy of Service tax.
- Service tax is exempted on the transportation of goods by road, rail or air when point of origin and destination are located outside India.

WITHDRAWAL OR AMENDMENTS OF EXEMPTIONS W.E.F. APRIL 1, 2011

- Revised service tax on travel by air-
  a. Domestic travel- economy class- Rs. 150/-
  b. Domestic travel- other than economy class- 10% i.e. normal rates
  c. International travel- Rs. 750/-

WITHDRAWAL OR AMENDMENTS OF EXEMPTIONS W.E.F. THE DATE OF ENACTMENT OF THE BILL

- Exemption from service tax on the membership fees under 'Club of association service' is being given to the associations or chambers representing industry of commerce for the period from 16.06.2005 to 31.03.2008.
- 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.

AMENDMENTS IN RULES W.E.F. APRIL 1, 2011

- Rule 6(4B)(iii) - Excess Service tax paid on provisional basis can be adjusted upto Rs. 200,000 (earlier Rs. 100,000).
- Rule 6(7B) – Composite rate on payment of service tax in respect of services rendered by Foreign Exchange Dealer / Authorised Dealer is reduced to 0.1% of gross amount of currency exchanged. Further separate invoice for service provided is not required.
- Where the amount of service tax has been self assessed and not paid the same shall be recovered with interest as per procedure referred in section 87 and the department need resort to the procedure referred in section 73.
- Value of Money Changing Services is defied as under:

  <u>Transaction is in Indian Currency</u>
  - Difference between RBI exchange rate and rate charged by service provider
  - Where RBI reference rate is not available – 1% of transaction amount in Indian Currency.

  <u>Transaction is not in Indian Currency</u>

  Lower of 1% of the amount of the two foreign currencies after converting them in to Indian currency.

- Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rule, 2006 are being amended so as to move some of the specific services from one category to another.

AMENDMENTS IN RULES W.E.F. THE DATE OF ENACTMENT OF BILL

Rule 6(7A) - Life insurer can pay service tax on the portion of the premium other than what is allocated for investments, when such break up of such premium is shown separately in the document. The composite rate increased from 1 to 1.5%.

AMENDMENTS IN RULES W.E.F. MARCH 31, 2011

A sub-rule (2A) is being inserted in rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rule, 2007 to provide that the credit of tax on input services of 'Erection, commissioning or installation'. 'Commercial or industrial construction' and 'Construction of complex' services as available to a person providing 'Works contract service' shall be restricted to 40% of tax paid, when such tax has been paid on full value of the service after availment of Cenvat credit on inputs.

AMENDMENTS IN ACT FROM A DATE TO BE NOTIFIED

- Relaxation in penalty in cases of fraud, collusion etc. is removed. Further during the course of audit if any unreported transaction found then penalty is levied ranging from 1% to 25% p.m. of tax amount.
- Reduction in Penalty for non payment of Tax
  a. Higher of 1% p.m. or Rs.100/- per day for the period of default.
  b. Maximum Penalty is up to 50% of Tax
- Penalty for contravention of Rules / Acts for which penalty is not specified separately anywhere in the Act / Rules – Rs.10,000/-
- Maximum penalty for evading tax will be equal to tax amount. Further where the tax payable is paid within 1 month together with interest, the penalty will be 50%. The same shall stand reduced to 25% in cases tax payable is paid within 1 month together with interest. Where the turnover is up to Rs.60 lacs in the preceding year or years mentioned in the show cause notice the period of month shall be revised to 90 days.
- Maximum penalty for delay in filing of return – is Rs.20,000/-
- Reintroduce the provisions relating to prosecution under section 89 as follows:
  (i) The prosecution shall apply in the following situations:
    a) provision of service without invoice;
    b) availment and utilization of Cenvat credit without receipt of inputs or input services;
    c) submitting false information; and
    d) non-payment of collected amount of service tax for a period of more than six months.
  (ii) The sanction for the prosecution will be granted at the level of Chief Commissioner.

POINT OF TAXATION RULES, 2011

The Rules have been framed and are proposed to be made effective from April 1, 2011. These rules will determine the point in time when the services shall be deemed to be provided.

NOTES:

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