Indian Budget 2011-2012

PARMAR & PALKAR

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UNION BUDGET 2011-12

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The Union Budget 2011 addresses hurdles such as tackling corruption, increasing the allocation for the education sector, and an array of reforms for the agriculture sector including the removal of production and distribution bottlenecks. The Government's reforms in the infrastructure space relate to an increased allocation and a comprehensive policy for PPP projects. In order to enhance the flow of funds, the FII limit for investment in corporate bonds issued in the infrastructure sector is being raised.

Further, the Finance Minister highlighted the Government's strategy to deal with the generation and circulation of black money, including entering into Tax Information Exchange Agreements and boosting the administrative machinery.

The following is a brief note on taxation proposals in the Union Budget 2011-12.

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Income Tax

(i) The following tables give Income Tax Slabs and Basic Rates of Tax (excluding Educational cess & Secondary & Higher Educational Cess) applicable for different categories of persons:-

a) Individual (other than specified in note below), HUF,AOP and BOI and Artificial juridical person referred to in section 2(31)(vii)

Income	F Y 2010-11	Proposed rate for FY 2011-12
Upto Rs.1.6 lakh	Nil	Nil
Above Rs.1.6 lakh and upto Rs.1.8 lakh	10%	Nil
Above Rs.1.8 lakh and upto Rs.5 lakh	10%	10%
Above Rs.5 lakh and upto Rs.8 lakh	20%	20%
Above Rs.8 lakh	30%	30%

Note:-

For the FY 2011-12, the proposed income upto which no tax is payable for following categories of persons is as follows:-

Category of Person	Income upto
a) Resident women below 60 years	Rs 1.9 lakh
b) Resident individual above 60 years but below 80 years	Rs 2.5 lakh
c) Resident individual above 80 years	Rs 5 lakh

b) Co-operative Society

Income	F Y 2010-11	Proposed for FY 2011-12
Upto Rs.10000	10%	10%
Above Rs.10000 and upto Rs.20000	20%	20%
Above Rs.20000	30%	30%

c) Partnership firm

Income	F Y 2010-11	Proposed for FY 2011-12
Net total Income	30%	30%

d) Local Authorities

Income	F Y 2010-11	Proposed for FY 2011-12
Net total Income	30%	30%

e) Companies

(i) Normal Tax

Company Type	F Y 2010-11	Proposed for FY 2011-12
Domestic Company	30%	30%
Foreign Company	40%	40%

(ii) Minimum Alternate Tax

Particulars	F Y 2010-11	Proposed for FY 2011-12
Book Profits	18%	18.50%

(iii) Surcharge on Normal Tax/MAT

Company Type	F Y 2010-11	Proposed for FY 2011-12
I) In Case of Domestic company having total income exceeding Rs. 1 Cr	7.50%	5%
II) In Case of foreign company having total income exceeding Rs.1Cr	2.50%	2%

However, marginal relief shall be allowed in the above cases to ensure that the additional amount of income tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees.

Education Cess and Secondary & Higher Educational Cess

Educational Cess and Secondary & Higher Educational Cess shall continue to be levied at the rate of two percent, and one percent, respectively, of income tax (as well as on MAT) including surcharge wherever applicable in all cases.

(ii) Dividend Distribution Tax u/s 115-O

Company Type	F Y 2010-11	Proposed for FY 2011-12
a) By Domestic Company	15%	15%
b) By Money Market Mutual Fund or Liquid Fund		
Recipient is:-		
Individual/HUF	25%	25%
Other Recipients	25%	30%
c) By Other Mutual Funds		
Recipient is:-		
Individual/HUF	12.5%	12.5%
Other Recipients	20%	30%
d) By Equity Oriented Mutual Fund	Nil	Nil

The above are basic rates. Surcharge, Educational Cess and Secondary & Higher Cess are to be added to arrive at actual rate of tax.

(iii) The following shows the rate at which ***Tax has to be Deducted at Source (TDS)*** from different categories of Payments made by the Assessee:-

Proposed for FY 2011-12

Section Code	Nature of Payment	Thousand Limit to deduct tax	If the recipient is an Individual / HUF	If the recipient is other than Individual / HUF
194-A	Interest other than interest on securities Interest from Banking Company	Rs.10000/- p.a	10%	20%
194-A	Interest other than interest on securities Interest other than from Banking Company		10%	20%
194-B	Winning from Lotteries & Puzzles	Rs.10000/- p.a	30%	30%
194-BB	Winning from Horse Races	Rs.5000/- p.a	30%	30%
194-C	Payment to Contractor/ Advertising Contractor/Sub Contractor	Rs.30000/- Per single Contract or Rs.75000 exceed during the financial year	1%	2%
194-D	Insurance Commission	Rs.20000/- p.a	10%	10%
194-E	Payment to non resident sportsmen or sport association		10%	
194-EE	Payment in respect of deposits under National Saving Scheme covered u/s 80CCA		20%	
194-F	Payment on A/c of repurchase of units by mutual funds or UTI covered u/s 80CCB		20%	
194-G	Commission, etc on sale of Lottery Ticket		10%	
194-LB	Interest received from Infrastructure Debt Funds whose income is exempt u/s 10(47)		5%	
194-H	Payment of commission or brokerage to Resident	Rs.5000/- p.a	10%	10%
194-I	Payment of Rent for Land Building or both or Rent for Furniture or fitting	Rs.180000/- p.a	10%	10%
194-I	Payment of Rent for use of Plant, machinery or Equipment	Rs.180000/- p.a	2%	2%
194-J	Payment of professional or technical services	Rs.30000/- p.a	10%	10%

Notes:

1) The Rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee(including transporter)
2) Surcharge & Education Cess is applicable in case of payment to non-resident including company other than domestic company

(iv)**<u>Amendment in Definition of "charitable purpose" [Section 2(15)]</u>**

"Charitable purpose" among others, includes "the relief of poor, education, medical relief and advancement of any other object of general public utility".

However, "***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 services 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 and receipts from such activities is ten lakh rupees or more in the previous year.

It is proposed to enhance the current monetary limit in respect of receipt from such activities from ***ten lakh*** rupees to ***twenty-five lakh*** rupees.

This amendment is proposed to take effect from ***Assessment year 2012-13*** and subsequent years.

<u>(v) Exemption of certain perquisite of Chairmen and Members of Union Public Service Commission [Section 10(45)]</u>

Currently, specified perquisites of the Chief Election Commissioner or Election Commissioner and the judge of Supreme Court are exempt from taxation.

It is proposed to amend section 10 to extend similar benefit of exemption in respect of specific perquisite and allowances, which will be ***notified by the Central Government***, received by both serving as well as retired Chairmen and Members of the Union Public Service Commission.

This amendment is proposed to take effect retrospectively from ***Assessment year 2008-09*** and subsequent years.

<u>(vi) Exemption of specified income of notified body or authority or trust or board or commission [Section 10(46)]</u>

The bill proposes to exempt specified income of body or authority or trust or board or commission which is notified by the Central Government and is set up or constituted by a Central, State or Provisional Act or constituted by Central or State Government for regulating or administering an activity for the ***benefit of general public***, if it is not engaged in any commercial activity.

A consequential amendment is also proposed in section 139 to provide for filing of the return of income by such notified entity.

This amendment is proposed to take effect from ***1st June, 2011.***

(vii) Exemption of income of Infrastructure debt fund [Section 10(47)]

The bill proposes to exempt ***any income*** of an Infrastructure debt fund, set up in accordance with the guidelines as may be prescribed and notified by Central Government in the Official Gazette. The objective is to facilitate setting up of infrastructure debt funds so as to augment long term and low cost funds from abroad for specific purpose.

A consequential amendment is also proposed in section 139 to provide for filing of the return of income by such debt fund.

The bill also proposes to amend section ***115A*** so as to provide ***taxability*** of any interest received by a non resident from such notified infrastructure debt fund ***@ 5%*** on the gross amount of such interest income. Consequently, it is proposed to insert new section ***194LB*** to provide ***TDS @ 5%*** by such fund on any such interest paid to a non-resident.

These amendments are proposed to take effect from ***1st June, 2011***.

(viii) Weighted deduction for scientific research and development [section 35(2AA)a]

The existing provision provide for a weighted deduction of 175% of the sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person for the purpose of an approved scientific research programme.

It is proposed to amend the clause (a) so as to enhance the weighted deduction to ***200%*** of the sum paid.

This amendment will take effect from ***assessment year 2012-13*** and subsequent years.

(ix) Investment linked deduction in respect of specified businesses [Section 35AD]

A) This section provides investment-linked tax incentive by way of allowing 100% deduction in respect 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". Currently, the following specified businesses are eligible for availing investment linked deduction under section 35AD(8)(c) :-

(i) setting up and operating a cold chain facility ;
(ii) setting up and operating a warehousing facility for storage of agriculture produce ;
(iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distributing, including storage facilities being an integral part of such network
(iv) building and operating, anywhere in India a new hotel of two-star or above category as classified by the Central Government ;
(v) building and operating, anywhere in India a new hospital with at least one hundred beds for patients ;
(vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation 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.

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

(a) developing and building a housing project under a scheme for ***affordable housing*** framed by the Central Government, as the case may be, and notified by the board in this behalf in accordance with the guidelines as may be prescribed; and
(b) ***new plant*** or increase in installed capacity of existing plant for production of ***fertilizer*** in India.

The above specified businesses should commence activities on or after ***1st April, 2011***.

B) Under section 73A, ***any loss*** of a "***specified business***" (under section 35AD) is allowed 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, the loss of an assessee on account of "specified business" claiming deductions 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 1st April, 2010 and which is eligible for deduction of expenditure under section 35AD.

This amendment will take effect retrospectively from ***1st April, 2011*** and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

(x) Deduction towards contribution to pension scheme of Central Government [Section 36]

It is proposed to insert a new clause (iv) in the said sub-section so as to provide that any sum paid by the assessee as an employer by way of contribution toward a pension scheme as referred to in section 80CCD on account of an employee to the extent it does not exceed ten per cent, of the salary of the employee in the previous year shall be allowed as deduction.

This amendment will take effect from ***Assessment year 2012-13*** and subsequent years.

(xi) Limit on deductions under section 80C, 80CCC and 80CCD amended [Section 80CCE]

It is proposed to amend the aforesaid section 80CCE so as to provide that ***contribution*** made by the Central Government or any other employer to a ***pension scheme*** under sub-section (2) of section 80CCD ***shall not be included in the limit of deduction of one lakh rupees*** provided under section 80CCE.

Presently, the contribution made by both, the employer as well as the employees, is included for calculating the said limit of Rs 1,00,000/-. Therefore, only the employee's contribution u/s 80CCD shall be included for calculating the limit of Rs 1,00,000/- u/s 80CCE.

This amendment will take effect from ***Assessment year 2012-13*** and subsequent years.

(xii) Deduction for investment in long-term infrastructure bonds [section 80CCF]

Under the existing provision of section 80CCF of the income-tax Act, a sum of Rs. 20,000 (over and above the existing limit of Rs. 1 lakh available under section 80CCE for tax saving) 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 allow deduction on account of investment in notified long-term infrastructure bonds for the financial year 2011-12 also.

This amendment will take effect from the Assessment year 2012-13

(xiii) Extension of time for tax holiday for power sector [Section 80-IA]

Under the existing provision of section 80-1A(4A)(iv) of the Income-tax Act, a deduction of 100% of profits and gains is allowed to an undertaking which:-

(a) is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st march 2011 ;

(b) starts transmission or distribution by laying a network of new transmission or distribution line at any time during the period beginning on 1st April, 1999 and ending on 31st march, 2011

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st march, 2011.

It is proposed to amend section 80-IA(4)(iv) to extend the terminal date for a further period of year, ***i.e upto 31st march, 2012.***

This amendment will take effect from the ***Assessment year 2012-13*** and subsequent years.

(xiv) Sunset of tax holiday for certain undertakings engaged in commercial production of mineral oil. [Section 80-IB(9)]

The said section provides that the amount of deduction to an undertaking shall be 100% of the profit for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfills certain condition stipulated therein.

Clause (ii) of the said sub-section requires that such undertaking is located in any part of the India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997.

It is proposed to amend the said clause so as to insert a provision therein which provide that the provision of said clause (ii) shall not apply to blocks licensed under a contract awarded after the 31st day of March, 2011 under the New Exploration Licensing Policy.

This amendment will take effect from the ***Assessment year 2012-13*** and subsequent years.

(xv) **Rationalisation of provisions relating to Transfer Pricing [Section 92]**

A. Rule of 5% variation in Arms Length Price (ALP) removed (Section 92C):-

This section provides the method 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 provision 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.

This amendment is proposed to take effect from the ***Assessment Year 2012-13*** and subsequent years.

B. Widening of Powers of TPO (Section 92CA):-

a) This section 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.

It is, proposed to amend 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 transaction referred to the TPO by the Assessing Officer.

The above is proposed to take effect from ***1st June 2011***.

b) Section 92CA(7) provide 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.

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. These provisions are amended to strengthen the powers of TPO to conduct on the spot enquiry.

The above is proposed to take effect from ***1st June 2011.***

C. Extension of due date for filing of Returns of Income in certain cases [Section 139]

Under the existing provisions of section 139, corporate assessees subject to Transfer Pricing provisions are required to file their Return of Income by 30th September of the assessment year.

Looking to the difficulties faced by the corporate assesses in accessing the contemporary comparable data in order to furnish Transfer Pricing Report in Form 3CEB referred to in Section 92E of the Act, the Bill proposes to extend the due date of filing tax returns of such assessees upto 30th November of the assessment year.

This amendment will be applicable from ***Assessment year 2012-13.***

(xvi) Anti Avoidance measures introduced for transactions with "Specified Jurisdiction" [Section 94A]

The Bill has inserted a new section 94A to specifically deal with transactions undertaken by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India. These measures are proposed to be introduced for restricting transactions with "Notified Jurisdictional Area".

The proposed section provides-

a)an enabling power to central government to notify any country or territory outside India as notified jurisdictional area due to the lack of effective exchange of information by it with India.

b) that if an assessee enter 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 within the meaning of section 92A, and that transaction shall be deemed to be an international transaction within the meaning of section 92B and, accordingly, the provision of section 92, 92A, 92B, 92C [except the second provision to sub section (2)], 92CA, 92CB, 92D, 92E and 92F shall apply to such transaction.

c) that notwithstanding anything contained in the Income-tax Act, no deduction in respect of any payment made to any financial institution located in the notified jurisdictional area shall be allow 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

d) that no deduction in respect of any other expenditure or allowances (including the depreciation) arising from the transaction with a person located in a notified territory shall be allowed under any provision of the Act unless the assessee maintain such other documents and furnishes the information as may be prescribed.

e) that if any sum is received from a person located in the notified jurisdictional area, then the onus is on the assessee to satisfactory 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 notwithstanding anything to the contrary contained in the Act.

f) that any payment made to a person located in the notified jurisdictional area shall be liable to deduction to tax at :-

a) the rates specified in the relevant provisions of the Act

b) rates or rates in force

c) 30%

whichever is higher

These amendments will take effect from ***1st June, 2011.***

(xvii) Taxation of certain foreign dividends at reduced rate [section 115BBD]

Under the existing provision of the Income-tax Act, dividend received from foreign companies is taxable in the hand of the resident shareholder at his applicable marginal rate of tax. Therefore, in case of Indian companies which received foreign dividend, such dividend is taxable at the rate of thirty per cent plus applicable surcharge and cess.

It is proposed to insert a new section 115BBD to provide that where total income of an Indian company for the previous year relevant to the assessment year 2012-13 includes any income by way of dividend received from a foreign subsidiary company, then such dividend shall be taxable at the rate of ***fifteen per cent.*** (plus applicable surcharge and cess) on the gross amount of dividend. No expenditure in respect of such dividend shall be allowed under the Act.

This amendment is proposed to take effect from the ***Assessment year 2012-13.***

(xviii) Sunset date introduced for exemption of Minimum Alternate Tax (MAT) on SEZ units/developers and Introduction of Dividend Distribution Tax on Special Economic Zones developers. [Section 115JB(6) and Section 115O(6)]

Under the existing provisions of section 115JB, no minimum alternate tax (MAT) payable on book profits in respect of income accrued or arising on or after 1st April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, of a Unit located in SEZ or of an Special Economic Zone (SEZ), as the case may be.

The bill now proposes to amend the proviso to section 115JB(6) so as to introduce the levy of minimum alternate tax in the case of SEZ developers and units.

This amendment will take effect from the Assessment year 2012-13 and subsequent years.

Further currently in terms of section 115-O(6), SEZ developer are not liable to pay dividend distribution tax on any amount declared, distributed or paid by such developer, by way of dividends (whether interim or otherwise)

The bill now proposes to amend section 115-O so as to make liable such SEZ developers for payment of distribution tax on any dividends declared, distributed or paid on or after 1st June, 2011.

This amendment will take effect from 1st June, 2011.

Consequential amendments have also been proposed in the Second Schedule of the SEZ Act, 2005.

(xix) Alternate Minimum Tax(AMT) for Limited Partnership (LLP) [Section 115JC – 115JF]

Under the present provisions, LLP has substantial advantage over a company, as it was not subject to Alternate Minimum Tax (AMT). In order to remove this anomaly, it is proposed to insert a new Chapter XII-BA in the Income-tax Act containing special provision relating to limited liability partnerships.

Under the proposed amendment, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternative minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such limited liabilities partnership and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

For the purpose of the above,

(i) “adjusted total income” shall be the total income before giving effect to this newly inserted chapter XII-BA as increased by the deduction claimed under any section included in Chapter VI-A under heading “C-Deductions in respect of certain income” and deduction claimed under section 10AA;

(ii) “alternate minimum tax” shall be the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent; and

(iii) “regular income tax” shall be the income-tax payable for a previous year by a limited liability partnership on its total income accordance with the provision of the Act other than the provision of this newly inserted chapter XII-BA.

It is further provided that the credit for tax (tax credit) paid by a limited liability partnership under this newly inserted chapter XII-BA shall be allowed to the extent of the excess of the alternate minimum tax paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allow to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax.

This amendment is proposed to take effect from the Assessment year 2012-13 and subsequent years.

(xx) Rationalisation of tax on income distributed to unit holders [Section 115R(2)]

Under the existing provision contained in section 115R(2) of the Income-tax Act, 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 per cent on income distributed by debt funds to a person other than an individual or HUF.

It is therefore proposed to amend section 115R(2) to provide that the Mutual Fund shall be liable to pay additional Income-tax on such distributed income at the rate of –

(a)25 per cent. If the recipient is an individual or HUF in case of distribution by a money market mutual fund or a liquid fund ;

(b)30 per cent if the recipient is any other person in case of distribution by a money market mutual fund or a liquid fund ;

(c) 12.5 per cent if the recipient is an individual or HUF in case of distribution by a debt fund other than a money market mutual fund or a liquid fund ; and

(d) 30 per cent if the recipient is any other person in case of distribution by debt fund other than a money market mutual fund or a liquid fund.

(e)Distribution of income by an equity-oriented fund shall continue to be exempt from tax.

This amendment is proposed to take effect from 1st June, 2011.

(xxi) Exemption to a class or classes of person from furnishing a return of income [Section 139 (1)]

Under the existing provision contained in section 139(1) of the Income-tax Act, 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, entire tax liability is discharged by the employer though deduction of tax at source. Complete details of such tax payers are also reported by the employer thought Tax Deduction at Source (TDS) statement. Therefore, in case where there are no other sources 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 person from the requirement of furnishing a return of income, having regard to such condition 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.

This amendment will take effect from 1st June, 2011.

(xxii) Extension of time limit for assessment in case of exchange of information [Section 153 and Section 153B]

Section 153 of the Income-tax Act provides for the time limit for completion of assessment and reassessments. In Explanation 1 to section 153 of the Income-tax Act, certain periods specified therein are to be excluded while computing the period of limitation for completion of assessment and reassessment.

It is proposed to exclude the time taken in obtaining information from the tax authorities in jurisdictions situated outside India, under an agreement referred to in section 90 or section 90A, from the statutory time limit prescribed for completion of assessment and reassessment.

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 of the income-tax Act.

These amendments will take effect from 1st June, 2011.

(xxiii) Collection of information on requests received from tax authorities outside India (Section 131 and Section 133)

Under the existing provisions certain income tax authorities have been conferred the same powers as available as 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.

The bill proposes to facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of information under section 90 or section 90A of the act.

Accordingly, 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 the notified income-tax authority, referred to in section 131(1) to do so the authority so notified by the Board shall be able to exercise the powers under section 131(1) notwithstanding that no 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 are proposed to be made in section 133 of the Act.

The said amendments will apply from 1st June, 2011.

(xxiv) Extension of time limit for issue of notification for processing a return in Centralised Processing Centres

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

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

The said amendments will apply retrospectively from 1st April, 2011.

(xxv) Modification in the conditions for filing an application before the Settlement Commission [Section 245C(1)]

The existing provision contained in the provision to section 245C(1) allow an application to be made before the settlement commission, if, -

(i) The proceedings have been initiated against the applicant as a result of search or requisition of books of accounts, as the case may be, and the additional amount of income tax payable on the income disclosed in the application exceeds fifty lakh rupees.

(ii) In other cases, if the additional amount of income tax payable on the income disclosed in the application exceeds ten lakh rupees

The bill now proposes to widen the scope by inserting a new clause (ia) and an Explanation thereafter in the section 245C(1) to enable a related person to file an application before the Settlement Commission, if,

(a) Is related to the person [referred to in (i) above] in whose case proceeding have been initiated as a result of search and who has filed an application; and

(b) Is a person in whose case proceeding have also been initiated as a result of search, the additional amount of income-tax payable on the income disclosed in his application exceed ten lakh rupees.

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 fifty lakh rupees. Entities related to such tax payer, who are also the subject matter of search, would now be allow to file an application for settlement, if additional income-tax payable in their application exceed ten lakh rupees.

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

This amendment will take effect from 1st June, 2011.

(xxvi) Power to Settlement Commission to rectify mistake apparent from record [Section 245D]

The bill proposes to grant power to Settlement Commission by inserting a new clause (6B) to rectify any mistake apparent from record, at any time within six months from the date of the order passed by it under sub-section (4) after giving notice to the applicant and the Commissioner of its intention and allowing them an opportunity of being heard.

Similar amendments are proposed in Wealth Tax Act.

This amendment will take effect from 1st June, 2011.

(xxvii) Omission of the requirement of quoting of Document Identification Number [section 282B]

Under the existing provision contained in section 282B of the Income-tax Act, every income-tax authority shall allot a computer-generated Document Identification Number in respect of every notice, order, letter or any correspondence issue by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

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 1st April, 2011.

(xxviii) Submission of prescribed information by a non-resident having liaison office [section 285]

The Bill seeks to insert a new section 285 in the Income-tax Act relating to the submission of statement by a non-resident having liaison office. The proposed new section provide that every person, being a non-resident having liaison office in India, set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.

This amendment will take effect from 1st June, 2011.

(xxix) Extension of time limit for recognition to a Provident Fund (Schedule IV)

Rule 3 of Part A of Schedule IV provides that recognition accorded to any provident fund on or before 31st March 2006 by the Chief Commissioner shall be withdrawn if such fund does not satisfy conditions prescribed in Rule 4 on or before 31st December, 2010. The conditions include that, where provisions of Section 1(3) & 1(4) of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 apply to such fund, such fund should be exempted u/s 17 of the said Act from the operation of all or any of the provision of any Scheme referred to in that Section.

It is proposed to amend the said proviso to the sub-rule (1) so as to extend the said time limit from 31st December, 2010 to 31st March, 2012.

This extension is proposed to be given with a view to provide adequate time to the Employee's Provident Funds Organization to process the application seeking exemption u/s 17 of the Employees Provident funds and Miscellaneous Provisions Act, 1952.

This amendment will take effect retrospectively from 1st January, 2011.

Service Tax

The following are major amendments in Service Tax in the Finance Bill, 2011.Except where specifically stated all amendments will come into effect from the enactment of Finance Bill.

1. W.e.f. 01/04/2011, the Service Tax will be levied and paid on accrual basis and not on receipt basis

As per point of Taxation Rules, 2011 framed vide notification 18/2011-ST and made effective from 01-04-2011, these rule determine the point in the when the service 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 rules:

i) Date on which service provided or to be provided
ii) Date of Invoice
iii) Date of Payment

Consequential changes have also been made in the Service Tax Rules, 1994 to alter the mode of payment of service tax from receipt of payment to provision of services and also to permit adjustment of taxes when service is not finally provided.

2. Provision of prosecution Re-introduced under section 89 :

The bill is proposing stringent changes in the existing Act, particularly with regard to launching of prosecution, the amount of penalty to be imposed and issuing of search warrants.

A striking feature of this bill in respect of service tax is that after a span of 15 years into provision relating to prosecution as provided in Central Excise Act have been made applicable to service tax also.

The provision of prosecution will apply in the following situations:

1) Provision of service without Invoice.
2) Availment and utilization of CENVAT credit without receiving input or input services
3) Submitting false information and
4) Non payment of amount of service tax collected for a period of more than 6 month, but not paid to the government treasury.

3. Rates of Service Tax

Standard rate of service tax retained at 10 per cent, while seeking a closer fit between present regime and its GST successor.

4. <u>Service Tax being Impose On The Following Specified Services :</u>

1) Services provided by the air-conditional restaurant having a license to serve alcoholic beverages in relation to servicing of food beverages.
2) Short-term accommodation provide by a hotel, inn, guesthouse, club or campsite or any other similar establishment for a continuous period of less than three month.

5. <u>Simplified Procedure for refund of service Tax in SEZ</u>

Refund of the services when are not wholly consumed shall be available on pro rata basis i.e ratio of SEZ turnover to total turnover suitable rule has been introduce in Cenvat Credit Rules, 2004.

6. <u>Scope of Certain Existing Services is Expanded or altered</u>

<u>a) Life Insurance Services</u>

i. To include all service provided to a policyholder or any person, by an insurer including re-insurer carrying on Life Insurance business.
ii. Where the break-up of premium is shown separately in any documents given to the policy holder, tax shall be charge on the portion of the premium other than what is allocated for investment.
iii. The composition scheme rate is also being increased from 1% to 1.5%.

<u>b) Club or association services</u>

Services given by Club or association to non-members:

<u>c) Legal Consultancy Service:-</u>

Legal consultancy service will encompass the service provided by a business entity to individual in relation to advice consultancy of assistance in any branch of law including representational services and services of arbitration.

<u>d) Commercial Training or Coaching Services:-</u>

Coaching classes providing training even for un-recognized courses would be covered.

e) Health Services:-

All services including diagnostic services, provided by a clinical establishment having more than 25 beds for non-patient treatment during any part of the year including the services provided by a doctor, not being employee of clinical establishment, from the premises of such establishment.

In view of the comprehensive coverage of health services, the existing health services where the payment requires to be made directly by the insurance company or business entities would no longer be operational.

f) Authorised Services Station Service:-

Authorised service station providing services to any person, for all motor vehicles other than goods carrier and three wheelers, the beautification services offer by such service station will be change to tax henceforth.

g)Business Support Services:-

Business support service will include the services provided by way of operational administrative assistance.

7. Following Services not liable to Service Tax :

i. Services provided by an organizer of business exhibitions in relation to business exhibition held outside India.

ii. Work contract service provided for construction of finishing of new residential complex under Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojna.

iii. Services provided within port of other port or an import under the 'Work Contract' services for specified purposes.

iv. Rashtriya Swasthya Bina Yojna under the 'General Insurance' services.

v. Air fright including in the value of imported goods will be excluded for the purpose of service tax under the service "transfer of goods by air"

vi. Services related to transportation of goods by road, rail or by air when both the origin and the destination on the located outside the India.

The changes in respect of air freight and transport of goods will be effective from 1/4/2011. Other changes will be effective immediately.

8. Other Concessions :-

An abatement of 25% from the taxable value is being provided for the purpose of levy of service tax under Transport of goods though coastal and land shipping.

Simplified scheme is introduce for claiming refund of service tax to SEZ units subject to certain conditions.

9. Amendment in Rules and Notifications :-

i. The rates of service tax of air travel are revised.

- Domestic Travel (economic class) from Rs.100 to Rs.150/-
- International Travel (economic class) from Rs.500 to Rs.750/-
- Domestic Travel (other than economic class) full rate i.e 10%

The above revisions are applicable for travel undertaken on or after 1/4/2011.

ii. An upward monetary limit of Rs.1.00 lakh for the excess amount of service tax is paid to improved to Rs.2.00 lakh (from 1/4/2011)

iii. Option is provided to pay service tax on the gross premium charged less amount allocated for investment or an amount @ 1.5% of the amount of gross premium charged. (from the date of enactment of Finance Bill, 2011)

iv. For service provided on sale and purchase of foreign exchange composition rate is reduce to 0.1% from existing 0.25%.

v. Special provisions are made in the valuation Rules for determining value of money changing services.

vi. Certain services have been shifted from the existing category to other categories under export of services Rules and Taxation of Services Rule. (from 01.04.2011)

vii. Increase of Composition scheme of Work Contract the input credit is restricted to 40% of the tax paid in respect of “erection commissioning or installation”, “commercial or Industrial construction” and “construction of complex services”. (From 01.03.2011

10. <u>Penalties Revised</u>

a) Maximum penalty u/s.77 is increased from Rs.5000/- to Rs.7000/- for general contravention.

b) Mandatory penalty equivalent to the amount of service tax evaded will be imposed u/s 78 for evasion on account of fraud, collusion, willful mis-statement, suppression of facts etc.

c) In case of demand of service tax arising out of investigation, verification and audit by the department the mandatory penalty shall be 50% of the tax amount. However the tax is paid within one month along with interest and reduce penalty the penalty will be limited to 25% of the tax evaded. The special concession has been given to the assessee whose turnover is less than Rs.60 lakh in any of the years under disputes, the period of payment of one month is extended to 90 days.

d) For assesses with turnover of less than Rs.60 lakh rate of interest will be lesser by 3% while charging u/s.73B and section 75.

e) The penalty for delayed payment u/s.76 is reduced from 2% to 1% per month of Rs.100/- per day whichever is higher subject to a sealing of 50% of the tax amount.

f) Increase in maximum penalty u/s 70 from Rs.2000 to Rs.20000 for delay in filing return.

11. <u>Amendment In CENVAT Credit Rules, 2004 :</u>

The CENVAT Credit Rule has been amended to provide:

i. CENVAT credit on payment of Service Tax on reverse charge mechanism.

ii. Restriction an availing CENVAT credit on input

iii. Mechanism for reversal of CENVAT credit availed on exempted goods/services.

Central Excise

(All changes will effective from 01.03.2011)

Major Proposal

1) No Show Cause Notice for voluntary payment

Major changes have been made in the provision of section 11A, 11AA, 11AB, and 11AC:

A new provision has been introduce by which a person from whom the central excise duty has been demanded is given an option to pay the duty before service of notice of the basis of its ascertainment of duty or duty ascertain by the Central Excise Officer along with interest thereon. On making such payment no show-cause notice shall be issued to him for the duty so paid or any penalty leviable. However, in case of any demand on account of fraud, collusion, willful mis-statement, suppression of fact or contravention of any of the provision of C. Excise Act, with an intention to evade payment of central excise duty can be made within 5 years hitherto.

2) Extended period of five years even for recovery by Audit/investigation by department

If any duty is found short paid during the course of audit, investigation or verification, then in such cases the duty can be demanded for a up to 5 years. However, in such cases an option is given for the payment of such duty in full or in part acceptable to the person along with the interest payable thereon and penalty equal to 1% of such duty per month not exceeding 25% of the duty. On making such payment no show-cause notice will be served and the proceeding shall be deemed to be concluded.

3) No interest for Voluntary payment of demand

Section 11AA has been substituted by which no interest shall be payable where the amount of duty is voluntary paid in full within 45 days from the issue of order without reserving any right to appeal.

4) Lesser penalty for payment of duty and interest

Section 11AC has been substituted by new section 11AC as per which if any recovery is effected in account of audit, investigation of verification by the department a mandatory penalty equal to 50% of the duty will be levied. However, if the duty and interest under section 11AA are paid within 30 days of the date of communication of the order of the department, the amount of penalty leviable shall be 25% of the duty so determined.

Further, the bill has substituted section 11A (6), whereby any person chargeable with duty under section 11A(5) may before the services of shoe cause notice on him, pay the duty in full or in part as may be accepted by him along with interest payable thereon and penalty equal to 1% of such duty per month but not exceeding maximum of 25% of the duty.

5) Withdrawal of Exemptions/concessions

a) 1% excise duty on 130 specified items is levied afresh and the Cenvat credit on the input of such goods cannot be availed.

b) Readymade garments and textiles made ups bearing a brand name or sold under a brand name will attract excise duty of 10% on the tariff value @ 60% of the retail sale price.

Rate Movement :

Changes in the basic rates of excise duty on some key items are set out below:

Items	Rate movement (%)		
Cenvat	Basic duty		Movement
	From	To	
Gold bars, other than tola bars, bearing manufacturer's engraved serial number and weight expressed in metric units	INR 280 per 10 gram	INR 200 per 10 gram	↓
Microprocessor (other than motherboards), floppy disc drive, CD drives, DVD drives/ DVD writers etc, when meant for external use with a	Nil	5	↑
Medicaments (excluding those used in ayurvedic, unani, siddha, homeopathic or bio-chemic systems)	Nil	1 (without credit); or 5	↑
Telephone sets and other transmission apparatus a) Mobile handsets, radio trunking terminals b) Wireless data modems cards	Nil	1 (without credit); or 5	↑
Storage devices a) CDs, VCDs, DVDs b) Sound / video recorded magnetic tapes, cassettes, discs c) Smart cards	Nil	1 (without credit); or 5	↑
Coffee or tea premixes	Nil	1 (without credit); or 5	↑
Color unexposed cinematographic film	10	Nil	↓
Conveyor belt system used for specified purposes	10	Nil	↓

Items	Rate movement (%)		
Cenvat	Basic duty		Movement
	From	To	
Cement manufactured in a mini pant: Cleared in packaged form			
a) Where RSP does not exceed INR 190 per 50 kilogram bag	INR 185 per tonne	10	↑
b) Where RSP exceeds INR 190 per 50 kilogram bag	INR 315 per tonne	10 plus INR 30 per tonne	↑
Cleared other than in packaged form	INR 215 per tonne	10	↑
Cement manufactured other than in a mini pant: Cleared in packaged form			
a) Where RSP does not exceed INR 190 per 50 kilogram bag	INR 290 per tonne	10 plus INR 80 per tonne	↑
b) Where RSP exceeds INR 190 per 50 kilogram bag	10	10 plus INR 160 per tonne	↑
Cleared other than in packaged form	Higher of 10 or INR 290 per tonne	10	
Cement Clinker	INR 375 per tonne	10 plus INR 200 per tonne	↓

CUSTOMS DUTY

(All changes are effective from 01.03.2011)

Major proposal

1. Concept of Self-assessment

A concept of "self-assessment" has been introduced for the first time in Custom Act by amending Section 2. The word "assessment" shall include provisional assessment, self-assessment, Re-assessment and any assessment in which goods are assessed in nil rate of duty.

2. Enhancement of time limit for claming refund of duty

Section 27 is substituted to enhance the time limit of claming refund of duty and interest from six month to one year bringing uniformity with regard to demanding of refund.

3. Relief on making voluntary payment of duty

Section 28 substituted

As per the new section 28, the person who has paid the duty along with interest shall not be served with any notice for recovery of such duty or interest or any penalty where duty has been demanded for the reason of collusion or willful mis-statement or suppression of facts. In a such case, if the concerned person pay the duty in full or in part as acceptable to him and interest payable thereon and the penalty equal to 25% of the duty specified within 30 days of the receipt of the notice and the informs the proper officer regarding such payment, the proceeding against such person shall be deemed to be have concluded.

Rate Movement

Changes in the basic rates of customs duty on some key items are set out below:

Items	Rate movement (%)		
	Basic duty		Movement
	From	To	
Pistachios	30	10	↓
Sun-dried dark seedless raisins	100	30	↓
Bamboo used in the manufacture of agarbatti	30	10	↓
Lactose used in the manufacture of homeopathic medicine	25	10	↓
Cranberry products	30	10	↓
De-oiled rice bran oil cake	30	Nil	↓
Mineral gypsum	5	2.5	↓

Items 0053	Rate movement (%)		
	Basic duty		Movement
	From	To	
Ferro-nickel	5	2.5	↓
Specified agriculture machinery	5	2.5	↓
Parts and components of specified agricultural machinery	7.5	2.5	↓
Micro irrigation equipment	7.5	5	↓
Cash dispensers	10	Nil	↓
Specified gems and jewellery machinery	7.5	5	↓
Polypropylene, stainless steel strip and stainless steel capillary tube for manufacture of syringe, needle, catheters, cannulae on actual user basis	10	5	↓
Endovascular stents	5	Nil	↓
Solar lantern/ lamps	10	5	↓
Aircrafts for non-scheduled operations	Nil	2.5	↑
Vanadium pentoxide and vanadium sludge	7.5	2.5	↓

Items	Rate movement (%)		
	Basic duty		Movement
	From	To	
All ores and concentrates (under 2601 to 2617 of CTA)	2	2.5%	↑
Carbon black feed stock	5	2.5	↓
Petroleum coke	5	2.5	↓
Acrylonitrile	5	2.5	↓
Diphenylmethane 4, 4-diisocyanate (MDI) (subject	7.5	5	↓
Caprolactam	10	7.5	↓
Life saving drugs i.e. Rasburicase, Nilotinib, Pneumococcal sacchride Conjugate Vaccine and Micafungin sodium for injection	10	5	↓
Crude palm stearin for manufacture of laundry soap (subject to actual user condition)	20	Nil	↓
Sodium polyacrylate	7.5	5	↓
Poly tetra metylene ether glycol (PT MEG) (subject to actual user condition)	7.5	5	↓
Nylon chips, yarn and fibre	10	7.5	↓
Pneumatic tyres and retreaded tyres of kind used for aircrafts	3	2.5	↓
Rayon grade wood pulp	5	2.5	↓
Waste paper	5	2.5	↓
Raw silk (not thrown)	30	5	↓
Cotton waste	10	Nil	↓
Stainless steel scrap	2.5	Nil	↓