

A brief explanation of insertions of budget wrt finance bill

Deduction for Donation not allowed for cash donations in excess of ten thousand rupees

Prohibition of cash donations in excess of ten thousand rupees

Section 80G of the Income-tax Act provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to specified conditions. The deduction is allowed in respect of any donation being a sum of money. Similarly, section 80GGA of the Income-tax Act provides for a deduction in respect of certain donations for scientific research or rural development made to research associations, universities, colleges or other associations/institutions, subject to specified conditions.

Currently, there is no provision in either of the aforesaid sections specifying the mode of payment of money. Therefore, it is proposed to amend sections 80G and 80GGA so as specify therein that any payment exceeding a sum of ten thousand rupees shall only be allowed as a deduction if such sum is paid by any mode other than cash.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

S. 80C No Deduction on life insurance Premium if premium payable exceed 10% of sum assured

Eligibility condition for deduction in respect of life insurance policies

Section 80C of the Income-tax Act provides that in computing the total income of an assessee, being an individual or an HUF, a deduction of up to one lakh rupees for life insurance premia, contributions to any provident fund, tuition fees, subscription to any deposit scheme of a public sector company engaged in financing, construction or purchase of houses in India for residential purposes, fixed term deposits of not less than five years with a scheduled bank, etc., is allowed.

The existing provisions contained in section 80C(3) provide that the deduction for life insurance premium shall be allowed for only so much of any premium or other payment made on an insurance policy as is not in excess of 20% of the actual capital sum assured.

It is proposed to amend the provisions to provide that the deduction for life insurance premium as regards insurance policies issued on or after 1st April, 2012 shall be allowed for only so much of the premium payable as does not exceed 10% of the actual capital sum assured.

It is further proposed to insert the definition of “actual capital sum assured” so as to provide that the actual capital sum assured in relation to a life insurance policy shall be the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account— (i) the value of any premiums agreed to be returned, or (ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person. This amendment has been proposed to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year. This definition is also referred to in the proposed *Explanation 2* in section 10(10D).

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

No Dividend Distribution Tax (DDT) on Dividend Payment upto DDT Paid Dividend recd from subsidiary Company

Removal of the cascading effect of Dividend Distribution Tax (DDT)

Section 115-O of the Act provides for taxation of distributed profits of domestic company. It provides that any amount declared, distributed or paid by way of dividends, whether out of current or accumulated profits, shall be liable to be taxed at the rate of 15%. The tax is known as Dividend Distribution Tax (DDT). Such distributed dividend is exempt in the hands of recipients.

Section 115-O of the Act provides that dividend liable for DDT in case of a company is to be reduced by an amount of dividend received from its subsidiary after payment of DDT if the company is not a subsidiary of any other company. This removes the cascading effect of DDT only in a two-tier corporate structure.

With a view to remove the cascading effect of DDT in multi-tier corporate structure, it is proposed to amend Section 115-O of the Act to provide that in case any company receives, during the year, any dividend from any subsidiary and such subsidiary has paid DDT as payable on such dividend, then, dividend distributed by the holding company in the same year, to that extent, shall not be subject to Dividend Distribution Tax under section 115-O of the Act. This amendment will take effect from 1st July, 2012.

Wealth Tax – Salary Limit for Exemption of residential house allotted to employee hiked

Wealth Tax – Exemption of residential house allotted to employee etc. of a company

Under the existing provisions of section 2 of the Wealth-tax Act, the specified assets for the purpose of levy of wealth tax do not include a residential house allotted by a company to an employee or an officer or a whole time director if the gross annual salary of such employee or officer, etc. is less than five lakh rupees.

Considering general increase in salary and inflation since revision of this limit, it is proposed to increase the existing threshold of gross salary from five lakh rupees to ten lakh rupees for the purpose of levying wealth-tax on residential house allotted by a company to an employee or an officer or a whole time director.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Tax Audit & presumptive taxation Limit rased to One Crore

Turnover or gross receipts for audit of accounts and presumptive taxation

I. Under the existing provisions of section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceed sixty lakh rupees. Similarly, a person carrying on a profession is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceed fifteen lakh rupees.

In order to reduce the compliance burden on small businesses and on professionals, it is proposed to increase the threshold limit of total sales, turnover or gross receipts, specified under section 44AB for getting accounts audited, from sixty lakh rupees to one crore rupees in the case of persons carrying on business and from fifteen lakh rupees to twenty five lakh rupees in the case of persons carrying on profession.

II. It is also proposed that for the purposes of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would be increased from sixty lakh rupees to one crore rupees.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply to the assessment year 2013-14 and subsequent assessment years.

Senior Citizens not having Business Income Exempt From Advance tax payment

Exemption for Senior Citizens from payment of advance tax

Under the existing provisions of Income-tax Act, every assessee is required to pay advance tax if the tax liability for the previous year exceeds ten thousand rupees. In case of senior citizens who have passive income of the nature of interest, rent, etc., the requirement of payment of advance tax results in raising compliance burden.

In order to reduce the compliance burden of such senior citizens, it is proposed that a resident senior citizen, not having any income chargeable under the head “Profits and gains of business or profession”, shall not be liable to pay advance tax and such senior citizen shall be allowed to discharge his tax liability (other than TDS) by payment of self assessment tax.

This amendment will take effect from the 1st April, 2012. Accordingly, the aforesaid senior citizen would not be required to pay advance tax for the financial year 2012-13 and subsequent financial year

Budget 2012 – Prosecution and imprisonment for Income Tax Evasion

Expediting prosecution proceedings under the Act

Chapter XXII of the Income-tax Act, 1961 details punishable offences and prosecution for such offences. Prosecution under the direct tax laws is used as a tool for deterrence and effective enforcement of laws.

It is proposed to strengthen the prosecution mechanism (through new sections 280A, 280B, 280C and 280D) under the Income-tax Act by –

- (i) Providing for constitution of Special Courts for trial of offences.
- (ii) Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in a summons trial are simpler and less time consuming.
- (iii) Providing for appointment of public prosecutors.

The existing provisions of section 276C, 276CC, 277, 277A and section 278 of the Income-tax Act provide that in a case where the amount of tax, penalty or interest which would have been evaded by a person exceeds one hundred thousand rupees, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

In case the amount which would have been evaded by a person does not exceed one hundred thousand rupees, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

The threshold of one hundred thousand rupees was introduced in 1976. It is proposed to be amended so that the revised threshold will be twenty-five hundred thousand rupees.

Summons trials apply to offences where the maximum term of imprisonment does not exceed two years. It is, therefore, proposed that where the amount which would have been evaded does not exceed twenty-five hundred thousand rupees, the person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

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

Budget 2012 – Penalty on undisclosed income found during the course of search at 10 pc, 20 pc, 30 pc

Penalty on undisclosed income found during the course of search

Under the existing provisions of section 271AAA of the Income-tax Act, no penalty is levied if the assessee admits the undisclosed income in a statement under sub-section (4) of section 132 recorded in the course of search and specifies the manner in which such income has been derived and pays the tax together with interest, if any, in respect of such income. As a result, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which return is not yet due) found during the course of search attracts a tax at the rate of 30% and no penalty is leviable.

In order to strengthen the penal provisions, it is proposed to provide that the provisions of section 271AAA will not be applicable for searches conducted on or after 1st July, 2012. It is also proposed to insert a new provision in the Act (section 271AAB) for levy of penalty in a case where search has been initiated on or after 1st July, 2012. The new section provides that,-

(i) If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10% of undisclosed income subject to the fulfillment of certain conditions.

(ii) If undisclosed income is not admitted during the course of search but disclosed in the return of income filed after the search, the taxpayer will be liable for penalty at the rate of 20% of undisclosed income subject to the fulfillment of certain conditions.

(iii) In a case not covered under (i) and (ii) above, the taxpayer will be liable for penalty at the rate ranging from 30% to 90% of undisclosed income.

These amendments will take effect from the 1st day of July, 2012 and will, accordingly, apply to any search and seizure action taken after this date.

Budget 2012 – Directors Remuneration not in nature of Salary to attract TDS U/s. 194J

TDS on remuneration to a director

Under the existing provisions of the Income-tax Act, a company, being an employer, is required to deduct tax at the time of payment of salary to its employees including Managing director/whole time director. However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary.

It is proposed to amend section 194J to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10% of such remuneration.

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

Budget 2012 : TDS on transfer of certain immovable properties (other than agricultural land)

Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land)

Under the existing provisions of the Income-tax Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc.

On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

In order to collect tax at the earliest point of time and also to have a reporting mechanism of transactions in the real estate sector, it is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of

immovable property (other than agricultural land), shall deduct tax, at the rate of 1% of such sum, if the consideration paid or payable for the transfer of such property exceeds –

- (a) fifty lakh rupees in case such property is situated in a specified urban agglomeration; or
- (b) twenty lakh rupees in case such property is situated in any other area.

It is further proposed to provide that where the consideration paid or payable for the transfer of such property is less than the value adopted or assessed or assessable by any authority of a State Government for the purposes of payment of stamp duty, the value so adopted or assessed or assessable shall be deemed as consideration paid or payable for the transfer of such immovable property.

For better compliance, it is also proposed to provide that a registering officer appointed under the Indian Registration Act,

1908 (Registrar) shall not register the transfer of any immovable property where taxes are required to be deducted under this provision unless the transferee furnishes proof of deduction and payment of TDS.

For reducing the compliance burden on the transferee, it is also proposed that a simple one page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property. The transferee would not be required to obtain any Tax Deduction and Collection Account Number (TAN) or to furnish any TDS statement as this would be mostly a one time transaction. The transferor would get credit of TDS like any other pre-paid taxes on the basis of information furnished by the transferee in the challan of payment of TDS.

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

Budget 2012 – Tax rates for Individual, HUF, Senior Citizen, Female, AOP, Firms, Company for F.Y. 2012-13

A. RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2012-13.

In respect of income of all categories of assessee liable to tax for the assessment year 2012-13, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2011, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases. **(1) Surcharge on income-tax—**

Surcharge shall be levied in respect of income liable to tax for the assessment year 2012-13, in the following cases:—

- (a) in the case of a domestic company having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of five per cent of such income tax.**

(b) in the case of a company, other than a domestic company, having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of two per cent. of such income tax.

However, marginal relief shall be allowed in all these 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.

Also, in the case of every company having total income chargeable to tax under section 115JB of the Income Tax Act, 1961 (hereinafter referred to as 'Income-tax Act') and where such income exceeds one crore rupees, surcharge at the rates mentioned above shall be levied and marginal relief shall also be provided.

(2) Education Cess —

For 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 two per cent. and one per cent., respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

II. Rates for deduction of income-tax at source during the financial year 2012-13 from certain incomes other than “Salaries”.

The rates for deduction of income-tax at source during the financial year 2012-13 from certain incomes other than “Salaries” have been specified in Part II of the First Schedule to the Bill. The rates for all the categories of persons will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2011, for the purposes of deduction of income-tax at source during the financial year 2011-12, except that in case of certain interest payments made to a non-residents by a specified Indian company engaged in prescribed business of infrastructure development, the rates for deduction have been now provided in the proposed new section 194LC.

(1) Surcharge—

The amount of tax so deducted, in the case of a company other than a domestic company, shall be increased by a surcharge at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

No surcharge will be levied on deductions in other cases.

(2) Education Cess—

“Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent. respectively, of income tax including surcharge wherever applicable, in the cases of persons not resident in India including companies other than domestic company.

III. Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 2012-13.

The rates for deduction of income-tax at source from “Salaries” during the financial year 2012-13 and also for computation of “advance tax” payable during the said year in the case of all categories of assesseees have been specified in Part III of the First Schedule to the Bill.

These rates are also applicable for charging income-tax during the financial year 2012-13 on current incomes in cases where accelerated assessments have to be made , for instance, provisional assessment of shipping profits arising in India to nonresidents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs—

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person

Paragraph A of Part-III of First Schedule to the Bill provides following rates of income-tax:-

(i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or Hindu undivided family or every association of persons or body of individuals , whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) are as under :—

Upto Rs. 2,00,000 - **Nil.**

Rs. 2,00,001 to Rs. 5,00,000 – **10 per cent.**

Rs. 5,00,001 to Rs. 10,00,000 – **20 per cent.**

Above Rs. 10,00,000 - **30 per cent.**

(ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Upto Rs. 2,50,000 - **Nil.**

Rs. 2,50,001 to Rs. 5,00,000 – **10 per cent.**

Rs. 5,00,001 to Rs.10,00,000 - **20 per cent.**

Above Rs. 10,00,000 - **30 per cent.**

(iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at anytime during the previous year, -

Upto Rs. 5,00,000 - **Nil.**

Rs. 5,00,001 to Rs. 10,00,000 - **20 per cent.**

Above Rs. 10,00,000 - **30 per cent.**

No surcharge shall be levied in the cases of persons covered under paragraph-A of part-III of the First Schedule.

B. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for assessment year 2012-13. No surcharge will be levied.

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for assessment year 2012-13. No surcharge shall be levied.

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the

Bill. This rate will continue to be the same as that specified for the assessment year 2012-13. No surcharge will be levied.

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the assessment year 2012-13.

The existing surcharge of five per cent in case of a domestic company shall continue to be levied. In case of companies other than domestic companies, the existing surcharge of two per cent. shall continue to be levied.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The existing surcharge of five per cent. in all other cases (including sections 115JB, 115-O, 115R, etc.) shall continue to be levied.

For financial 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 two per cent. and one per cent. 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. [Clause 2]

Budget 2012- Alternate Minimum Tax (AMT) on all persons other than companies

Under the existing provisions of the Income-tax Act, Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT) are levied on companies and limited liability partnerships (LLPs) respectively. However, no such tax is levied on the other form of business organisations such as partnership firms, sole proprietorship, association of persons, etc.

In order to widen the tax base vis-à-vis profit linked deductions, it is proposed to amend provisions regarding AMT contained in Chapter XII-BA in the Income-tax Act to provide that a person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading “C – Deductions in respect of certain incomes” or under section 10AA, shall be liable to pay AMT.

Under the proposed amendments, where the regular income-tax payable for a previous year by a person (other than a company) is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income at the rate of 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 provisions of Chapter XII-BA as increased by the deductions claimed under any section (other than section 80P) included in Chapter VI-A under the heading “C – Deductions in respect of certain incomes” 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 person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII-BA.

It is further provided that the provisions of AMT under Chapter XII-BA shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person referred to in section 2(31)(vii) if the adjusted total income of such person does not exceed twenty lakh rupees.

It is also provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII-BA shall be allowed to the extent of the excess of the AMT 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 allowed to be set off for an assessment year in which the regular income-tax exceeds the AMT to the extent of the excess of the regular income-tax over the AMT.

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

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Budget 2012 – Changes in Service Tax

I. RATE OF SERVICE TAX:

- 1) The rate of service tax is being increased from ten per cent. to twelve per cent.
- 2) Consequent to change in the rate of service tax, changes are also being made in specific and compounding rates of tax for the following:
 - a) Service in relation to purchase and sale of foreign currency including money changing;
 - b) Service of promotion, marketing, organizing or in any manner assisting in organizing lottery;
 - c) Works contract service;
 - d) Reversal of cenvat credit under rule 6(3)(i).
- 3) Life insurance service: Where the entire premium is not towards risk cover, the first year's premium shall be taxed at the rate of three per cent. while subsequent premia shall attract tax at the rate of 1.5 per cent. Availment of full cenvat credit is being allowed.
- 4) Transport of passengers embarking in India for domestic and international journey by air : The dual rate structure of maximum service tax of Rupees 150 and Rupees 750 in case of economy class travel is being replaced by an ad valorem rate of twelve per cent. with abatement of sixty per cent. subject to the condition that no credit on inputs and capital goods is taken;

[The above changes will be applicable from 01.04.2012]

II. INTRODUCTION OF NEGATIVE LIST APPROACH:

A Negative List approach to taxation of services is being introduced vide new sections, namely, 65B, 66B, 66C, 66D, 66E and 66F proposed in Chapter V of the Finance Act, 1994 (please refer clause 143 of the Finance Bill, 2012). The services specified in the 'Negative List' (section 66D) shall remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax. Negative list approach to taxation of services shall come into effect from a date to be notified, after the Finance Bill, 2012 receives the assent of the President. For operationalizing the Negative List approach, a number of changes have been proposed in Chapter V of the Finance Act, 1994. Detailed information regarding these changes is being made available as a Guidance Paper, which will be placed in the public domain. The consequential changes in Service Tax Rules, 1994, Service Tax (Determination of Value) Rules, 2006 and Cenvat Credit Rules, 2004 also form part of this Guidance Paper. Provisions relating to positive list approach, namely, sections 65, 65A, 66, and 66A currently appearing in Chapter V of the Finance Act, 1994, will cease to operate from a date to be notified later, as and when the negative list approach begins to operate.

To support the negative list approach to taxation of services, draft Place of Provision of Services Rules, 2012 is being proposed. The draft Place of Provision of Services Rules contains principles on the basis of which taxing jurisdiction of a service can be determined. The Place of Provision of Services Rules,

2012 will be notified after (section 66C) the Finance Bill, 2012 receives the assent of the President. When the Place of Provision of Services Rules comes into effect, existing 'Export of Services Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006' will be rescinded.

III. AMENDMENTS IN THE FINANCE ACT, 1994:

Chapter V of the Finance Act, 1994 is being amended:

- 1) A new section 67A is being inserted to prescribe that the value of taxable service (particularly in the case of import and export of taxable services) and the rate of tax shall be determined in terms of Point of Taxation Rules, 2011.
- 2) A new section 72A is being inserted to introduce provisions relating to special audit in the service tax law on the lines of section 14A and section 14AA of the Central Excise Act, 1944. Under this newly introduced section, special audit can be ordered under specified circumstances. Consequently, section 14AA is being omitted from section 83.
- 3) The one-year time limit for issuance of notice for specified category of offences prescribed under section 73(1) of the Finance Act, 1994, is being increased to eighteen months. A new sub-section (1A) is being inserted in section 73 of the Finance Act, 1994 to prescribe that follow-on notices issued on the same grounds need not repeat the grounds but only state the amount of service tax chargeable for the subsequent period. Statement of tax due for the subsequent period, served on the assessee with reference to the earlier demand notice, will be deemed as a notice under section 73(1) of the Finance Act, 1994.
- 4) Section 83 is being amended to make Settlement Commission provisions applicable to service tax in line with the similar provisions contained in sections 31, 32, 32A to 32P of the Central Excise Act, 1944.
- 5) Section 83 is being amended to make the revision mechanism prescribed in section 35EE of the Central Excise Act, 1944, applicable to service tax, to the extent possible.
- 6) Section 85 and section 86 are being amended on the lines of section 35 and 35E of the Central Excise Act so as to harmonize the limitation for filing assessee appeal before Commissioner (Appeals) and revenue appeal before the Tribunal.
- 7) Section 94(2) is being amended to obtain powers (a) to provide for the manner of compounding and to specify the amount of compounding of offences along the lines of Central Excise (Compounding of Offences) Rules, 2005; (b) to provide for rules for settlement of cases, along the lines of central excise.

[The above changes will come into effect from the date of enactment of the Finance Bill, 2012]

IV. NEW REVERSE CHARGE MECHANISM:

- 1) Section 68(2) of the Finance Act, 1994 is being amended to put the onus of payment of service tax on reverse charge basis partly on service provider and partly on service receiver. The scheme is proposed to be made applicable on three specific services i.e. hiring of means of transport; construction and man power supply. A notification will be issued after the Finance Bill, 2012 receives

the assent of the President, in which the manner and extent of service tax payable by service provider and service receiver in the case of the three services will be specified.

2) Consequent to the above change, suitable amendment is also being made in the concept of 'person liable to pay' provided in Rule 2(1)(d) of Service Tax Rules, 1994.

V. RENTING OF IMMOVABLE PROPERTY SERVICE:

Constitutional validity of the levy of service tax on renting of immovable property has been the subject matter of litigation leading to pronouncement of court judgments favorable to revenue, including those of Honourable Delhi High Court and Honourable Supreme Court. Taking an overall view, the Government has decided to waive the penalty for those taxpayers who pay the service tax due on the renting of immovable property service (as on 06.03.2012), in full along with interest. For this purpose, a new section 80A is being inserted in the Finance Act, 1994. This scheme of penalty waiver will be open only for a period of six months from the date of enactment of the Finance Bill, 2012.

VI. RETROSPECTIVE EXEMPTIONS:

1) Vide Notification No.24/2009-ST dated 27.07.2009 service tax on repair of roads is already exempted. Vide section 97 of the Finance Act, 1994, the exemption granted to repair of roads is being extended for the earlier period from 16.06.2005 to 26.07.2009.

2) Management, maintenance or repair service undertaken in relation to non-commercial Government buildings is being exempted from service tax vide section 98, with effect from 16.06.2005 till the new charging section, namely section 66B, comes into force.

3) In the last budget, sub-rule 6A was inserted under rule 6 of the Cenvat Credit Rules, 2004 to protect the service providers located in the Domestic Tariff Area from the reversal of Cenvat credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule 6A is being given retrospective effect from 10.02.2006 [clause 144 of the Finance Bill, 2012].

4) Service provided by an association of dyeing units in relation to common effluent treatment plants was exempted from service tax vide Notification No.42/2011-ST dated 25.07.2011. The scope of the exemption is being expanded and the amended notification is being given retrospective effect from 16.06.2005[clause 145 of the Finance Bill, 2012].

[The above retrospective exemptions will come into effect on the date of enactment of the Finance Bill, 2012]

VII. AMENDMENTS IN RULES:

1) Cenvat Credit Rules, 2004 is being amended:

(a) Existing rule 5 to be replaced with a new rule to simplify the procedure for refund of unutilized credit on the account of exports;

(b) Credit is being allowed on motor vehicles (except those of heading nos. 8702, 8703, 8704, 8711 and their chassis). The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed;

(c) Credit of insurance and service station service is being allowed to—

(i) insurance companies in respect of motor vehicles insured and re-insured by them; and

(ii) manufacturers in respect of motor vehicles manufactured by them.

(d) At present, credit on goods can be taken only after they are brought to the premises of the service provider. Rule 4(1) and 4(2) are being amended to allow a service provider to take credit of inputs or capital goods whenever the goods are delivered to him, subject to specified conditions.

(e) Rule 7 for input service distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

(f) Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by the service receiver on reverse charge basis.

2) Service Tax Rules, 1994 is being amended as follows:

(a) The time period provided in rule 4A for issuance of invoice is being increased to thirty days. For banks and financial institutions providing banking and other financial services, the period shall be forty five days;

(b) Rule 6(4A) is being amended to allow unlimited amount of permissible adjustments.

(c) At present, in the case of export and, individuals and firms rendering eight specified services, the point of taxation is the date of payment subject to certain conditions. This special dispensation is being shifted from the Point of Taxation Rules to the Service Tax Rules.

(d) In case of exporters, the period extended by the Reserve Bank of India on specific requests is also being included in the period for which the tax liability is allowed to be deferred.

(e) The option of deferred payment is being allowed for all service providers rather than for specific services. The facility will be available only to individuals and partnership firms (including limited liability partnership) upto a turnover of taxable services of Rupees Fifty lakhs subject to the condition that their turnover of taxable services in previous year was below Rupees Fifty lakhs. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

3) Point of Taxation Rules, 2011 is being amended to—

(a) Change the definition of continuous supply of service to capture the entire dimension of the concept, namely, the recurrent nature of services and the obligation for payment periodically or from time-to-time;

(b) Omit rule 6 in respect of continuous supply of service and merge it with rule 3. Rules 4 and 5, which deal with situations covering change in effective rate of tax and taxation of new services, shall now be applicable to continuous supply of services also;

(c) Define the date of payment;

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

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

Budget 2012 – Reopening time limit Increased to 16 Years for income in relation to asset located outside India

Reassessment of income in relation to any asset located outside India

Under the provisions of section 149 of the Income-tax Act, the time limit for issue of notice for reopening an assessment on account of income escaping assessment is 6 years. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions.

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

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

The provisions of sections 147 and 149 are procedural in nature and will take effect from 1st July, 2012 for enabling reopening of proceedings for and assessment year commencing prior to this date. This is proposed to be clarified through an Explanation stating that the provisions of these sections, as amended, by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

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

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