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Budget Highlights

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New policy announcements

Direct Tax Code (DTC) and Goods and Service Tax (GST)

The Finance Minister reiterated -

- the expeditious enactment of DTC.
- the commitment on the introduction of GST, creating a structure of GST network and towards the drafting of model legislation for Centre and State GST.

Tax rates

Individual

Slab Rate	Current	Proposed	Maximum Savings
Nil	₹180,000	₹200,000	2,060
10%	₹180,001 to ₹500,000	₹200,001 to ₹500,000	
20%	₹500,001 to ₹800,000	₹500,001 to ₹1,000,000	20,600
30%	> ₹800,000	> ₹1,000,000	

- Education cess of 3% continues.
- No differentiation for basic exemption limit for women. Accordingly, the additional benefit to women is lower by ₹1,000.
- Proposed slab rates in line with DTC Bill, 2010.

Corporate

	Current	Proposed
Corporate		
- Domestic	30%	30%
- Foreign	40%	40%
MAT	18.5%	18.5%
DDT	15%	15%

- No change in base corporate tax rate for domestic and foreign companies and DDT
- No change in surcharge and cess.
- Effective tax rates are as below:
  - For domestic companies, where income exceeds ₹1 crore - 32.445%, where income is less than ₹1 crore – 30.6%.
  - For foreign companies, where income exceeds ₹1 crore – 42.024%, where income is less than ₹1 crore – 41.2%.

Direct Taxes

Tax incentives and reliefs

Specified Companies

- Interest income paid by specified companies (infrastructure companies like construction of road, toll road or bridge, power etc. and companies in the business of operation of aircraft and manufacture or production of fertilisers) to a non-resident subject to concessional withholding tax rate of 5%:
  - in respect of monies borrowed on or after the 1 July 2012 but before the 1 July 2015 in foreign currency, from a source outside India under a loan agreement approved by the Central Government; and
  - to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment.

Venture Capital Undertakings

- Venture capital benefit is available to all funds without any restrictions. Existing sectoral restrictions (software, information technology, production of basic drugs in the pharmaceutical sector, biotechnology, etc.) have been removed.
- Exemption from withholding tax provisions on income paid or credited by venture capital funds or venture capital companies withdrawn.
- Income of venture capital fund and companies taxable in the hands of investors on accrual basis with no deferrals.

Dividend

- Beneficial tax rate of 15% on dividend income from foreign subsidiaries extended by 1 year.
- Presently, one of the conditions for claiming credit for dividend distribution tax is that the dividend recipient should not be a subsidiary of any other company. This condition has now been dispensed with.

Tax Holiday Benefits

- Sunset clause has been extended till 31 March 2013 for undertaking engaged in generation and / or distribution / transmission of power.
- New sectors to be added for the purposes of investment linked deduction.

Investment in Plant and Machinery

- Benefit of additional depreciation in the initial year proposed to be extended to undertakings engaged in generation or generation and distribution of power.

Research and development

- Weighted deduction of 200% for in-house research expenditure is currently available till 31 March 2012. This has been extended for a further period of 5 years till 31 March 2017.

Securities Transaction Tax (STT)

- STT on actual delivery or transfer of shares reduced from the existing 0.125% to 0.1%.

Others

- Exemption for income of foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to certain conditions including approval from Central Government and foreign company not being engaged in any activity, other than receipt of such income, in India.
- Weighted deduction of 150% on expenses incurred on following projects notified by the board –
  - Skill development projects in manufacturing sector
  - Agricultural extension projects.

Judicial precedents reversed by retrospective amendments

Indirect transfer of capital assets

- Presently, deemed income includes income from transfer of a capital asset situated in India.
- Scope of deemed income expanded to include income from transfer of share or interest in a Company / entity registered / incorporated outside India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.[1]
- The term "property" as used in the definition of capital asset to include any rights of management or control or any other rights whatsoever in relation to an Indian Company.
- Enabling provisions also included in the definition of the term "transfer" – includes disposing of or parting with an assets or any interest therein notwithstanding that the same is flowing from the transfer of shares of a company registered or incorporated outside India.
- In respect of such transactions, it is clarified that non-residents

[1] Through this, the recent Supreme Court ruling in the case of Vodafone has been reversed.

are required to withhold taxes at source for any payments made to any other non-resident if the payment represents income of the non-resident payee, chargeable to tax in India.

Software

- Definition of royalty amended retrospectively from 01 June 1976 to specifically cover the use or right to use computer software (including granting of a licence). Medium of transfer not relevant for determining taxability.

Bandwidth / Satellite transmission

- The term "process" used in the definition of royalty has been clarified to include transmission by satellite, cable, optic fibre or by any other similar technology, whether or not such process is secret. Effective retrospectively from 01 June 1976.

Condition to avail benefits under the tax treaty

- Residency Certificate mandatory for claiming benefit under the tax treaty.

General Anti-Avoidance Rule (GAAR)

- GAAR introduced primarily to codify the doctrine of substance over form and to deal with aggressive tax planning.
- GAAR provisions may override tax treaties to prevent treaty abuse and bring certain cross border transactions under taxation.
- An arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement with attendant tax consequences.
- Impermissible avoidance arrangement
  - An arrangement would be declared as an impermissible avoidance arrangement if the main purpose or one of the purposes is to obtain a tax benefit and satisfies certain other conditions (lacks commercial substance, etc.)
- Lacking commercial substance - An arrangement will be deemed to lack commercial substance if:
  - The substance of the arrangement is inconsistent with, or differs significantly from, the form of its individual steps or parts; or
  - It involves round tripping financing or elements that have effect of offsetting each other or includes an accommodating party or a transaction which disguises the value, location, source, ownership or control of fund; or

- It involves a location of an asset / transaction / place of residence of any party which has been so located only for the purpose of obtaining tax benefits.
- Consequences of an impermissible avoidance arrangement
  - Once the arrangement is held to be an impermissible avoidance agreement then the tax authorities may:
    - disregard or ignore the arrangement or part thereof,
    - recharacterise any step,
    - disregarding any corporate structure,
    - denial of benefits under tax treaty, etc.
- Framing of guidelines
  - GAAR provisions to be applied in accordance with guidelines to be prescribed by Board.
- Onus
  - The onus to prove that the main purpose of the arrangement is not to obtain the tax benefits would be on the taxpayer.
- Process
  - The Assessing Officer would be required to make a reference to the Commissioner for invoking the anti-avoidance provisions who may refer the case to an Approving Panel, consisting of 3 members
  - The Approving Panel would be required to either declare an arrangement to be impermissible or otherwise within a period of six months.
  - Taxpayer to file appeal before the Income Tax Appellate Tribunal.

Alternate Minimum Tax (AMT)

- Presently, AMT which is applicable to LLP now extended to all non-corporates who claim certain deductions in computing their total income.
- Threshold limit of ₹20 lakhs for individuals, HUF, AOP, BOI and artificial juridical persons.
- AMT Credit allowed to be carried forward up to 10 years

Minimum Alternate Tax (MAT)

- Insurance, Electricity Companies and Banks incorporated under the Companies Act, 1956, have been brought under MAT regime.
- Gains on disposal of revalued assets, even if not credited to the profit and loss account, to be considered for MAT purposes.

Mergers and acquisitions

- Requirement to issue shares dispensed with in case of amalgamation of subsidiary company into holding company.
- Requirement to issue shares on proportionate basis in case of demerger is dispensed with where the demerged company is subsidiary of the resultant company.

Personal taxation

- Basic exemption limit enhanced to ₹200,000 from ₹180,000.
- No differentiation for basic exemption limit for women.
- No change in basic exemption limits for senior citizens.
- Unexplained amounts/credits in the books of accounts are deemed to be income of the assessee and are chargeable to income tax. Such amounts would henceforth be subject to tax @ 30% without any deductions / exemptions.
- Residents having assets (including financial interest in any entity) located outside India are required to furnish tax returns mandatorily from financial year 2011-12 onwards. This would be irrespective of whether they have income chargeable to tax in India or otherwise.
- Senior citizens (individuals aged 60 years and above), not having income from business or profession are not required to pay advance tax.
- Any sum received under a life insurance policy is exempt from tax, provided the premium payable for such policy for the year does not exceed 10% of the sum assured, as against 20% presently.

- Deduction of ₹15,000 under Section 80D has been broadened to include expenditure on preventive health check-up. The quantum of such benefit has been restricted to ₹5,000.
- Exemption of ₹10,000 is available for interest earned on deposits in savings bank account, co-operative banks and post office.

Capital Gains

- Exemption available for capital gains on sale of residential property (house or land) where the net consideration is invested in a small and medium enterprise (SME) subject to specified conditions.
- In cases where consideration for transfer of capital asset is not determinable, fair market value of the asset to be treated as sale consideration.

Income from Other Sources

- Consideration for issue of shares, received from any resident by a company in which public is not substantially interested, in excess of the fair market value, shall be liable to tax. However, this does not apply to consideration received by a venture capital undertaking from a Venture Capital Company / fund.

Other amendments

- Time limit for issue of notice for reopening assessments is enhanced to 16 years where income relating to assets situated outside India has escaped assessment.

Withholding tax (TDS)

- TDS on transfer or certain immovable properties (other than agricultural land)

- – TDS @ 1% if the consideration on transfer exceeds –
    - ₹50 lakhs in case such property situated in specified urban agglomeration; or
    - ₹20 lakhs in case such property is situated in any other area.
  – If consideration is less than value adopted or assessed by stamp duty authorities, such value be deemed as consideration for transfer of such immovable property.
- TDS on remuneration (other than salary) to a director @ 10%.
- Threshold limit to withhold taxes on interest on debentures is increased from ₹2,500 to 5,000.

Tax Collection at Source (TCS)

- Seller of bullion or jewellery shall collect tax @ 1% of sale consideration from every buyer if sale consideration in cash exceeds ₹2 lakhs.
- Seller to collect 1% tax on sale of minerals (coal, lignite and iron Ore), subject to conditions.

Other amendments

- Time limit for completion of assessment, re-assessments, revisions and appellate proceedings extended.
- Rates of daily tonnage income revised.
- Additional onus on closely held companies to explain the nature and source of any sums credited except in the case of the shareholder being a well regulated entity like Venture capital funds etc., registered with the SEBI.

Transfer Pricing

Advance Pricing Arrangement (APA) introduced

- The Finance Bill 2012 proposes to introduce the APA which was initially included as part of the Direct Tax Code
- The Board is empowered to enter into an APA with any person undertaking an international transaction seeking to determine the Arm's Length Price or the manner of determination of Arm's Length Price
- APA is only applicable for international transactions and valid for a period of 5 consecutive years or years as specified in the agreement
- The Arm's Length Price under the APA may be determined under any method whether prescribed or not.
- APA shall be legally binding on the taxpayer and on the income tax authorities in respect of the international transaction for which the APA is entered
- APA shall not be binding if there is a change in law having bearing on such APA
- The Board shall prescribe the scheme specifying the manner, form, procedure and other matters in respect of the APA
- The provisions relating to the filing of Return/ assessments/ re-assessments consequent to the conclusion of APA has also been modified to the above effect

Introduction of Transfer Pricing provisions to Specified Domestic Transactions[2]

- A new Section has been introduced by which Specified Domestic Transactions have been brought under the purview of Transfer Pricing regulations
- The computation of value of Specified Domestic Transactions will be as per Arm's Length provisions under Transfer Pricing regulations
- The provision would be applicable if the value of Specified Domestic transactions in aggregate exceeds ₹5 Crore.
- The Specific Domestic Transactions for the purposes of application of Transfer Pricng provisions would be as follows:
  - Expenses/ payment transactions between related persons as covered under the provisions of Section 40 A (2) (b);
  - Transfer of goods/ services/ business from one unit/ undertaking of the Assesse to another unit/ undertaking of the assesse, claiming benefit under Section 80 IA, under Chapter VI A or 10 AA where the provisions of 80IA are applicable;

[2] In line with Supreme Court Ruling in case of Glaxo Smithkline Asia(P) Ltd- Special Leave to Appeal (Civil) No(s).18121/2007

- The Assesse would be required to maintain/ furnish documentation and obtain certification of Specified Domestic Transactions
- The other Transfer Pricing provisions pertaining to international transactions would also be applicable for Specified Domestic Transactions

Clarification on applicability of allowable variation from Arm's Length Price

- It is clarified that provision relating to the allowable variation is applicable to all assessment/ reassessment proceedings pending before the assessing officer as on 1st day of October 2009
- As a consequent change to the above clarification, the assesse cannot claim a standard deduction of 5% for all the Financial Years starting 2001-02, but may claim the benefit only if the variation between Transfer Price and Arm's Length price is within 5% of the Transfer Price
- From FY 2012-13, the variation percentage would be limited to 3% instead of 5%

International Transaction-Definition clarified (effective FY 2001-02)

- Clarified definition of tangible property to include building, transportation vehicle, machinery, furniture, equipment etc. or commodity or any other article, product or thing etc.
- Clarified definition of intangible property to include use of rights regarding land rights, customer list, franchise, marketing channel, brand etc. or any other business or commercial rights of similar nature
- Definition now includes business restructuring or re-organization irrespective of bearing on profit, income, losses – current or future

Dispute Resolution Panel (DRP)-Significant Changes

- The order of DRP is now appealable by the Assessing Officer to the ITAT with effect from 1st July 2012
- DRP is empowered to pass directions on any matter arising out of the assessment proceedings irrespective whether such matter was raised by the eligible assessee or not. Amendment effective FY 2008-09

Reference to TPO

TPO can determine Arm's Length Price of any international transaction entered into by the assesse, not referred to him by the AO, provided that assessee has not reported the same under section 92E. Amendment retrospectively from 1 June 2002

For cases concluded before 1 July 2012, the Assessing officer will not have right to re-open the case only on account of such amendment

Other procedural

- Due date for filing Form 3CEB for non-corporate taxpayers
  - Extension of timeline till 30 November effective for FY 2011-12 onwards
- Extended Scope of Penalty
  - Penalty provision has been amended to included failure to report transactions, maintaining or furnishing incorrect information
  - Penalty is leviable at rate of 2% of value of transaction
  - These changes will be effective from 1 July 2012

Indirect Tax

Customs

- Peak rate of Customs Duty maintained at 10%
- Customs duty exemption on specified equipments extended to all infrastructure projects
- Cess on Countervailing Duty exempted for on imported goods
- Rate of Basic Customs Duty (BCD) on capital goods for setting up / expansion of Iron ore plants reduced from 7.5% to 2.5%
- Exemption from BCD for setting up/expansion of fertilizer projects extended till 31 March 2015
- Full exemption from BCD extended to equipments for Coal mining projects
- Full exemption from BCD on LCD/ LED TV panels
- BCD fully exempted/ reduced on inputs for power generation like NG/LNG, steam coal, uranium concentrates
- Exemption from BCD and CVD provided in respect of aircraft tyres and maintenance spares
- Duty free limit on articles accompanying passengers increased from ₹25,000/- to ₹35,000/-
- Reduction in import duty on parts of hybrid vehicles, railway safety equipment's, CFL lamps, specified lifesaving drugs, tubes and pipes for boilers
- Electronic payment of Customs duty being contemplated for specified importers

Excise

- Standard rate of Excise duty on non-petroleum goods increased from 10 % to 12 %
- Excise duty of 2% for spare parts of mobile phones without CENVAT credit
- Merit rate for non –petroleum goods increased from 5% to 6% and rate of 1% on certain items imposed in the last Budget increased to 2%
- Cement/Cigarettes to be assessed on Specific –cum- advalorem basis (Retail Sale Price (RSP)). Abatement on RSP also notified.
- Process of packing / re-packing / labelling/ re-labelling or alteration of RSP in case of cigarettes shall be deemed to be manufacture for purpose of levy of excise duty
- Abatement of RSP on readymade Garments and made up articles of textiles increased from 55% to 70% of RSP
- Duty on Eco-friendly products like electric/hybrid vehicles and LED lamps reduced to 6%
- New methodology prescribed for distribution of credit by an input service distributor(ISD)
- Facility to transfer unutilized Cenvat

Credit of Special Additional Duty from one factory to another of the same manufacturer

- Interest on credit wrongly taken is not payable unless the same is utilized

Service Tax

- Service tax rate increased from 10% to 12%
- Paradigm shift in the manner of taxation of services. As against the present system of defining the taxable services, it is proposed to define the services that are not taxable (Negative list approach introduced)
- List of services exempt from tax have been pruned to 10 from 88
- Exemption to specified infrastructure projects have been retained
- Excess service tax paid can be adjusted without any monetary limit
- Penalty is waived if Service tax for the past period in respect of Renting of Immovable Property service is paid along with interest within 6 months
- Time limit for issuing show cause notice increased from 12 month to 18 months
- Provisions relating to Settlement Commission extended to Service tax
- Point of Taxation Rules rationalised
- In order to align with the proposed GST, a Draft Place of Provision of Services Rules, 2012 has been issued

Central Sales Tax

- Central Sales Tax rate continues at 2% with Form C

Goods and Service Tax

- GST to be implemented in consultation with the States at the earliest
- A model legislation for Centre and State GST is under preparation
- GST Network (GSTN) to be set up as a National Information Utility and will become operational by August 2012
- GSTN will implement common PAN-based registration, returns filing and payments processing for all States on a shared platform

Source: Finance Bill, 2012. All amendments are effective 01 April 2012 unless otherwise stated.