Oiling Indian Economy

SYNOPSIS OF UNION BUDGET 2012-13
TAXATION PROPOSALS

Contents

INCOME TAX

Changes in Tax Rate Structure

- ✓ Basic exemption limit in case of Individual, HUF, AOP and BOI will be enhanced from Rs.1.80 Lacs to Rs.2 Lacs. Upper limit of 20% tax slab will also be raised form Rs. 8 Lacs to Rs. 10 Lacs. Also female assesses below 60 years have been brought at par with male assesses. No change in Corporate Tax, Firm & LLP Tax Rate and Also no change in MAT and AMT rates. The new slab for every assesses will now be as under:

Particulars	Tax	Education Cess	Secondary & Higher Education Cess	Total
In the case of every Individual, HUF, AOP/BOI other than Resident Senior Citizens				
Up to Rs. 2,00,000	Nil	Nil	Nil	Nil
Rs. 2,00,001 to Rs. 5,00,000	10%	2%	1%	10.30%
Rs. 5,00,001 to Rs. 10,00,000	20%	2%	1%	20.60%
Rs. 10,00,001 and above	30%	2%	1%	30.90%
In the case of every Resident Senior Citizen aged between 60 to 80 years				
Up to Rs. 2,50,000	Nil	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 5,00,000	10%	2%	1%	10.30%
Rs. 5,00,001 to Rs. 10,00,000	20%	2%	1%	20.60%
Rs. 10,00,001 and above	30%	2%	1%	30.90%
In the case of every Resident Senior Citizen aged above 80 years				
Up to Rs. 5,00,000	Nil	Nil	Nil	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	2%	1%	20.60%
Rs. 10,00,001 and above	30%	2%	1%	30.90%
In the case of Artificial Juridical Person, Firms, LLP & Domestic Companies				
Partnership Firms, LLP, AJP and Domestic Companies	30%	2%	1%	30.90%
Non Domestic Companies	40%	2%	1%	41.20%
Note : For Non Domestic Companies, Surcharge @ 2% will be levied if income exceeding Rs. 1 cr and For Domestic Companies, Surcharge @ 5% will be levied if income exceeding Rs. 1 crore				
Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT)				
Domestic Companies	18.5%	2%	1%	19.06%
Non Domestic Companies	18.5%	2%	1%	19.06%
Other than Companies	18.5%	2%	1%	19.06%
Note : For Non Domestic Companies, Surcharge @ 2% will be levied if income exceeding Rs. 1 cr and For Domestic Companies, Surcharge @ 5% will be levied if income exceeding Rs. 1 crore				
Co-operative Society				
Up to Rs. 10,000	10%	2%	1%	10.30%
Rs. 10,001 to Rs. 20,000	20%	2%	1%	20.60%
Rs. 20,001 and above	30%	2%	1%	30.90%

Deduction under Chapter VI

- ✓ Eligibility condition for deduction in respect of Life Insurance Premium (LIP) shortened
  - Currently deduction u/s. 80C in respect of LIP qualifies for deduction only if the premium amount **Paid** is less than 20% of the capital sum assured
  - However, as per the new provision deduction u/s. 80C in respect of LIP qualifies for deduction only if the premium amount **Payable** is less than 10% of the capital sum assured
  - This proposed amendment will apply to insurance policies issued on or after the 1st April, 2012

- ✓ Eligibility condition to exempt Life Insurance Policies shortened
  - To give the effect of the above change in section 80C, a similar modification will also be done section 10(10D) as under
  - Any sum received from a Life Insurance policy including bonus on such policy will be exempt from tax, provided the premium payable for such policy for the year does not exceed 10% of actual capital sum assured. Thus it is proposed to reduce the criteria of premium amount by 10%.
  - The limit of 10% of actual capital sum assured will apply to the minimum of the sum assured in any of the year of the policy.
  - This proposed amendment will apply to insurance policies issued on or after the 1st April, 2012

- ✓ Broadened the scope of deduction u/s. 80D to cover expenditure on preventive health checkup incurred by individual taxpayers
  - any payment made by an assessee on account of preventive health check-up of self, spouse, dependant children or parents(s) during the previous year as eligible for deduction **within the overall limits (i.e Rs. 20,000 or Rs. 15,000)** prescribed in the section. However, the said deduction on account of expenditure on preventive health check-up shall not exceed in the aggregate Rs.5,000. (Effective from AY 2013-14)

- It is further provided that for the purpose of the deduction under section 80D, payment can be made – (i) by any mode, including cash, in respect of any sum paid on account of preventive health check-up and (ii) by any mode other than cash, in all other cases.

✓ Restriction on donations made in cash for claiming deduction

- Sections 80G and 80GGA has been amended to specify that any payment exceeding a sum of Rs. 10,000 shall only be allowed as a deduction if such sum is paid by any mode other than cash. In short, to claim the deduction in the above mentioned section it is mandatory to make donations **by any mode other than cash**. (Effective from AY 2013-14)

✓ A new deduction up to Rs. 10,000 for interest from saving / post bank accounts to individual taxpayers

- As per the proposed new section 80TTA of the Act, a deduction up to an extent of ten thousand rupees in aggregate shall be allowed to an assessee, being an individual or a Hindu undivided family, in respect of any income by way of interest on deposits (not being time deposits) in a savings account with—
  - i.) a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act);
  - ii.) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
  - iii.) a post office, as defined in clause (k) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).
- However, where the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the association or body. (Effective from AY 2013-14)

- ✓ Rajiv Gandhi Equity Savings Scheme to be introduced for income tax deduction of 50% to retail investors
  - It is proposed to introduce a new scheme called Rajiv Gandhi Equity Savings Scheme. The scheme would allow for income tax deduction of 50 per cent to new retail investors, who invest up to Rs. 50,000 directly in equities and whose annual income is below Rs. 10 lacs. The scheme will have a lock-in period of 3 years.

Deduction in respect of Capital Gains

- ✓ New exemption form Long Term Capital Gain on residential property if sale consideration is used for subscription in equity of a manufacturing SME for purchase of new plant and machinery
  - It is proposed to insert a new section 54GB so as to provide rollover relief from long term capital gains tax to an individual or an HUF on transfer of a residential property (house or plot of land) in case where –
    - i.) The net sale consideration is utilized for subscribing in the equity shares of a newly start-up SME company in the manufacturing sector.
    - ii.) The SME company utilizes the share subscription money for purchase of new plant and machinery within a year from the date of subscription
    - iii.) Individual or HUF holds more than 50% of share or voting rights in such SME company
  - However, this relief would be subject to the fulfillment of other specified conditions also (Effective from AY 2013-14)

- ✓ Benefit of section 54B extended to HUF assesses
  - Capital gains on transfer of land which has been used for agricultural purposes for more than two years by assessee or his parent, is exempt if the whole of capital gains has been reinvested in the purchase of agricultural land in the next two years.
  - It is now proposed that this benefit be also granted to a HUF (Effective from AY 2013-14)

Changes in the definition of Relative

- ✓ Gift by members to HUF
  - The definition of relative will be amended to include any member of HUF. Accordingly, any sum of money or property received by HUF from its members will not be considered as income in the hands of HUF.
  - With retrospective effect from 01.10.2009

Changes in relation to Share Capital and Share Premium collected by a Pvt. Ltd. company

- ✓ Measures to prevent generation and circulation of unaccounted money by amending section 68
  - It is proposed to amend section 68 of the Act to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company (which covers Pvt. Ltd. Companies) shall be treated as explained only if the source of funds is also explained by the assessee company in the hands of the resident shareholder.
  - Thus, the companies are required to establish the identity and credit worthiness of shareholder and genuineness of transaction. and should also prove the source of money in the hands of such shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit.
  - If the company fails to do so, the sum shall be treated as income of the company and added to its income. (Effective from AY 2013-14)
- ✓ Share Premium in excess of Fair Market Value to treated as income u/s. 56(2)
  - A company, not being a company in which the public are substantially interested (which covers Pvt. Ltd. Companies) receives, in any previous year, from any person being a resident, any consideration for issue of shares. In such a case if the consideration received for issue of shares exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income tax under the head "Income from other sources. Share Premium in excess of Fair Market Value to treated as income u/s. 56(2)

- A company, not being a company in which the public are substantially interested (which covers Pvt. Ltd. Companies) receives, in any previous year, from any person being a resident, any consideration for issue of shares. In such a case if the consideration received for issue of shares exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income tax under the head “Income from other sources. (Effective from AY 2013-14)

Extension of scope weighted deduction

✓ Weighted deduction of 200% u/s. 35(2AB) for in-house research expenditure is currently available till 31 March 2012. This is proposed to be extended for a further period of 5 years till 31st March 2017.

✓ Weighted deduction of 150% u/s.35CCC & 35CCD on expenses incurred on projects notified by the board namely agricultural extension projects and skill development projects in manufacturing sector respectively. (From AY 2013-14)

✓ Three new type of sectors added for the purpose of Investment Linked Deduction u/s. 35AD

- It is proposed to include three new businesses as “specified business” for the purposes of the investment-linked deduction under section 35AD, namely:-
  - (i) Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962 (52 of 1962);
  - (ii) Bee-keeping and production of honey and beeswax; and
  - (iii) Setting up and operating a warehousing facility for storage of sugar.

  (Effective from AY 2013-14)

Non – Resident Taxation

✓ Judicial precedents reversed by retrospective amendments

- Indirect transfer of capital assets

  (i) Presently, deemed income includes income from transfer of a capital asset situated in India

  (ii) 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

  (iii) The term "property" as used in the definition of capital asset to include any right of management or control or any other right whosoever in relation to an India Company

  (iv) 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

  (v) In respect of such transactions, it is clarified that no-residents are required to withhold taxes at source for any payments made to any other non-resident if the payment represent income of the non-resident payee, chargeable to tax in India

- **Retrospective amendments in section 9 and 195 has override the apex court verdict in the well-known case of Vodafone and generated revenue of thousands of crore to Government.**

Transfer Pricing

✓ Specified Domestic Transactions included within Transfer Pricing purview

- It is proposed that Transfer Pricing Regulations would apply to Specified Domestic Transactions subject to a threshold limit of Rs. 500 lacs.
- It is proposed that Specified Domestic Transactions would be such transactions as-
  - (i) Are not international transactions;
  - (ii) Transactions relating to expenses/ payment transactions between related persons;
  - (iii) Transfer of goods/ services/ business by the assessee covered under the beneficial provisions of 80 IA or under Chapter VI A or 10 AA where the provisions of 80 IA are applicable.
- It is proposed that the following Transfer Pricing provisions would be applicable to Specified Domestic Transactions-
  - (i) Determination of Arm's Length Price for any allowance for Expense, Interest or Income
  - (ii) TP Compliance including Maintenance of TP Documentation and Certification
  - (iii) TP Assessment and Appellate proceeding as applicable to "International Transactions"
  - (iv) Penalty consequences for non-maintenance and furnishing of TP Documentation and failure to report transactions, not obtaining TP Certificate
- Penalty provision u/s. 271 (1) (c) also extends to Specified Domestic Transactions (Effective from AY 2013-14)

General Anti Avoidance Rule (GAAR)

- In view of aggressive tax planning with the use of complicated structure, the government felt that it is essential to have statutory provisions to systemize the principle of "substance over form" where the real intention of the parties and effect of the transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to hide the real intent and purpose.

- The Finance Bill brings into a proposal for Anti Avoidance of Tax which is termed as GAAR. The GAAR provisions provide for any arrangement which results in reduction or avoidance of tax as if it has not taken place at all and the tax will be computed accordingly. The provisions are on the line of what was given in the Direct Tax Code (DTC) discussion paper.

- Provisions of GAAR are invoked when assessee has entered into an "impermissible avoidance arrangement". The main basis of invoking GAAR is that any transaction or step in a transaction which has one of its main purposes is to obtain of a tax benefit, should be disregarded or dealt with in such a manner so as to protect the right of the revenue to taxes.

- The proposed enactment will be effective from 1st April 2013, and will accordingly apply in relation to the assessment year 2013-2014 and subsequent assessment years.

TDS and TCS related issues

- ✓ TDS on remuneration to director
  - Section 194J is amended to provide that tax is required to be deducted @ 10% on the remuneration or fees or commission by whatever name called paid to a director, **which is not in the nature of salary** (Effective from 01.07.2012)

- ✓ TDS on transfer of certain immovable properties other than agricultural land u/s. 194LAA
  - TDS @ 1% if the consideration payable on transfer exceeds
    - i.) Rs. 50 lacs in case such property is situated in specified areas
    - ii.) Rs. 20 lacs in case such property is situated in any other areas

    In any case the assessable amount for purpose of TDS shall not be less than the value adopted or assessed by stamp duty authority for transfer of such immovable property

  - 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.

  - It is further proposed that the registering officer shall not register any document unless the transferee furnishes the proof of deduction of income-tax and payment to the credit of the central Government in the prescribed form.

  - This Amendment will take Effect from 01.07.2012

✓ Threshold limit in case of compulsory acquisition increased

- It is proposed that tax will be deducted on compensation or enhanced compensation received in excess of Rs. 2 lacs as against existing Rs. 1 lacs from compulsory acquisition of immovable property u/s. 194LA (Effective from 01.07.2012)

✓ Amendment when no TDS is deducted and the disallowance of expenses in respect thereof

- As per the current provisions of the Act, a person is considered as assessee in default if tax is not deducted at source in respect of payment made to resident.
- It is proposed that a person will not be considered as assessee in default if-
  - i.) The recipient resident furnishes return of income
  - ii.) The recipient discloses such income in his return of income
  - iii.) The recipient resident pays tax thereon
  - iv.) The person responsible for payment furnishes a certificated in a prescribed form from an accountant
- However, interest will be payable for failure to deduct the tax from the date on which tax was deductible till the date of furnishing the return of income by the recipient
- **Earlier the expenditures on which no tax had been deducted were disallowed u/s. 40(a)(ia) but Consequent to the above change in the expenditure will be allowed as deduction in the year in which the recipient furnishes his ROI and proper interest has been deposited to the credit of Government.**
- Effective from 01.07.2012

✓ Time limit for passing order u/s. 201(3) increased

- At present the time limit for passing the order in respect of deeming a person to be an assessee in default is now been proposed to be increased from 4 years to 6 years from the end of financial year in which payment is made or credit is given.
- This will be applicable from retrospectively from FY 2009-10

✓ TCS provisions extended to include trading of lignite, iron ore, coal

- Tax @ 1% will be collected on coal, lignite and iron ore except where the purchase is meant for personal use or utilized for the purpose of manufacturing, processing or producing article or things or purchased by a public sector company or Government body (Effective from 01.07.2012)

✓ TCS provisions extended on cash sale of bullion and jewellery

- The seller of bullion and jewellery shall collect tax at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds Rs. 2 lacs and **the payment is made in cash**.
- This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use. (Effective from 01.07.2012)

✓ It is proposed that TDS/TCS will not be considered in computing the advance tax payable when the person responsible for deducting/collecting the tax has failed to do so.

✓ Fees and penalty for late filing of TDS returns

- A Fee of Rs.200 per day has been levied for late furnishing of TDS statement from the due date of furnishing of TDS statement to the date of furnishing of TDS statement. However, the total amount of fee shall not exceed the total amount of tax deductible during the period for which the TDS statement is delayed.
- In addition to said fee, a penalty ranging from Rs.10,000 to Rs.1,00,000 shall also be levied for not furnishing TDS statement within the prescribed time
- Comparison of proposed provisions with the prevailing provisions:

Penalty for	Current	Proposes
Incorrect information in TDS/TDS return	Nil	Rs. 10,000 to Rs. 1,00,000
Delay in furnishing of TDS/TCS statement	Rs. 100 per day if levied by department	**Compulsory fees of Rs. 200 per day** and penalty of Rs. 10,000 to Rs. 1,00,000 (Penalty if return is not filed within 1 year)

- This Amendment will take Effect from 01.07.2012

Other important amendments

- ✓ Alternate Minimum Tax (AMT) provisions extended to cover Individual, HUF, Firm, AOP and BOI, Artificial Juridical Person subject to certain conditions
  - AMT is not applicable in case where adjusted total income of Individual, HUF, AOP and BOI and Artificial Juridical Person does not exceed Rs. 20 Lacs (adjusted total income means total income before claiming deduction u/s. 80H to 80TT (except 80P) and 10AA)
  - Presently AMT which is applicable to LLP now extended to all non corporate assessee who claim deduction u/s. 80H to 80TT (except 80P) and 10AA while computing their total income
  - AMT credit will be allowed to credit forward for 10 years

- ✓ Tax credit of Alternate Minimum Tax (AMT) will be reduced while computing interest u/s. 234A/B/C.

- ✓ Threshold Limit of turnover / gross receipts for Tax Audit increased to Rs. 1 Crore for business and Rs. 25 Lacs for professionals
  - From the existing limit of Rs. 60 Lacs for tax audit u/s. 44AB for business has been increased to Rs. 1 crore hence the concern having turnover below Rs. 1 crore are not required to get their books of accounts audited
  - From the existing limit of Rs. 15 Lacs for tax audit u/s. 44AB for professional has been increased to Rs. 25 Lacs hence the professionals having gross receipts below Rs. 25 Lacs are not required to get their books of accounts audited

- ✓ For presumptive taxation u/s. 44AD, threshold limit of turnover / gross receipts increased to Rs. 1 Crore
  - Consequent to the above increase in the limit of tax audit, It is proposed that for the purposes of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would be increased from Rs. 60 lacs to Rs. 1 crore

- ✓ 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.

- ✓ Exclusion of certain persons doing specified business/profession form the scheme of presumptive taxation u/s. 44AD
  - This presumptive scheme is not applicable to
    - i.) a person carrying on profession as referred to in sub-section (1) of section 44AA
    - ii.) persons earning income in the nature of commission or brokerage income; or
    - iii.) a person carrying on any agency business.

- ✓ Reduction of the eligible age for senior citizens
  - It is proposed to reduce qualifying age of a resident senior citizen to 60 years for the following-
    - i.) Deduction up to Rs. 20,000 for health insurance policy
    - ii.) Deduction up to Rs. 60,000 for treatment of specified disease
    - iii.) Declaration for non-deduction TDS in respect of interest, dividends, etc.

- ✓ It is proposed that processing of return shall not be necessary when notice has been issued u/s. 143(2) for the scrutiny assessment

- ✓ Income of Trust or Institution
  - It is proposed that income of trust or institution will not be exempt if the object of the trust or institution involves the carrying on or rendering of any service to any activity in nature of trade, commerce or business or any activity, fees for which exceeds Rs. 10 lacs.
  - This amendments will be applicable retrospectively from FY 2008-09

- ✓ Residents having assets (including financial interest in any entity) or a signing authority in any account, located outside India are required to furnish tax returns mandatory from financial year 2011-12 onwards. This would be irrespective of whether they have income chargeable to tax in India or otherwise.

- ✓ Reference to valuation officer u/s. 55A for value of property as on 01.04.1981
    - In case where the Assessing Officer is of the opinion that the value taken by the assessee as on 1.4.1981 is higher than the fair market value of the asset as on that date, the Assessing Officer would be enabled to make a reference to the Valuation Officer for determining the fair market value of the property.

- ✓ Time limit for issue of notice for re-opening assessment is enhanced to 16 years where income relating to assets situated outside India has escaped assessment

- ✓ Tax on Income from undisclosed sources
    - It is proposed that unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D will be taxed @ 30% (plus surcharge and cess as applicable).
    - It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections.

- ✓ Threshold limit for initiating the prosecution proceedings is proposed to be increased from Rs. 1,00,000 to Rs. 2,50,000.

- ✓ Time limit for completion of assessment and re assessment extended as below:

Proceedings	Period commencing from the end of	Current time (months)	Proposed time (months)
Regular assessment / Block Assessment	Assessment year	21	24
Reassessment	Financial year in which notice is issued	9	12
Fresh assessment pursuant to directions given in appeal / revision order	Financial year in which order is issued	9	12

- ✓ **Security Transaction Tax (STT) reduced by 20% in Cash Delivery Segment**

SERVICE TAX

The Finance Bill, 2012 has proposed vast changes in service tax criteria by making changes in the definition of service and also by proposing Negative list for levy of service tax.

The following amendments will be applicable from a date to be notified after enactment of the Finance Bill, 2012.

Negative List Approach

- ✓ Taxation of services will be based on negative list as against levy of service tax on specified services. The new system of taxation of services proposes to impose service tax on all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another.

- ✓ Negative list of services covers the following services
  - Services provided by specified persons:
    - i.) By government or a local authority excluding certain select prescribed services
    - ii.) Reserve Bank of India
    - iii.) Foreign diplomatic mission located in India
  - Specified services related to
    - iv.) Agriculture
    - v.) Education
    - vi.) Financial services
    - vii.) Transportation of passenger, with or without accompanied belongings, by specified persons
    - viii.) Transport of goods
  - Others
    - ix.) Trading of goods
    - x.) Any process amounting to manufacture or production of goods
    - xi.) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television

xii.) Access to a road or a bridge on payment of toll charges

xiii.) Betting, gambling or lottery

xiv.) Admission to entertainment events or access to amusement facilities

xv.) Transmission or distribution of electricity by an electricity transmission or distribution utility

xvi.) Renting of residential dwelling for use as residence

xvii.) Funeral, burial, crematorium or mortuary services including transportation of the deceased

- In addition to the above 17 services The Government has also proposed to exempt certain services by Notification No. 12/2012 dated 17.03.2012.

✓ Negative list will be effective from a date to be notified after the enactment of the Finance Bill, 2012.

Proposed Amendment in Definition of Service after implementation of Negative List

✓ The term 'service' is proposed to be defined as any activity carried out by a person for another for consideration, and includes a declared service, but shall **not** include the following

- any activity that constitutes only a transfer of title in goods or immovable property by way of sale, gift or in any other manner
- a transaction in money or actionable claim
- any service provided by an employee to the employer in the course of or in relation to employment
- fees taken in any court or a tribunal set up under a law for the time being in force

✓ Declared Services, which are activities carried out by a person for another for consideration, liable to service tax, are listed below:

- Renting of immovable property
- Specified services related to construction of a complex, building, civil structure or a part thereof
- Temporary transfer or permitting the use or enjoyment of any intellectual property right

- Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- Activities in relation to delivery of goods on hire purchase or any system of payment by installments
- Service portion in the execution of a works contract and
- Portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

✓ The following functions, performed by specified entities are not classifiable as a service

- Members of various legislative bodies at central, state and local level, who receive any consideration in performing the functions of that office as such member the duties performed by any person who holds any post in pursuance of the provisions of the constitution in that capacity; or
- Duties performed by any person as a chairperson or a member or a director in a body established by the central government or state governments or local authority and who is not deemed as an employee before the commencement of this section.

Changes in Works Contract Service

✓ Valuation of works contract is to be determined as under:

(i) Service Tax at normal rate when value derived by Gross amount of the works contract less various deduction as per the old provision in Rule 2A of Determination of Value Rules, 2006 (No change in this method of valuation)

(ii) Where the value is not derived as above, there is an abatement scheme as under (Newly introduced vide notification 11/2012).

Category of work contract	Value on which service is to be paid
Execution of original works	40% of the total amount
Execution of original works includes value of land where any part of the consideration is received before the completion of the building (Contracts involving construction of complex or building)	25% of the total amount
Other works contracts, not covered above, which include completion and finishing services	60% of the total amount

- Any free issue material used in the above work is to be included in the total amount
- No CENVAT credit is available for the input of Goods used in the execution of Works Contract

(iii) If either of the above two valuation rules is not followed, Service tax on works contract services under the composition scheme to be charged @ 4.8%

Reverse Charge Mechanism

✓ Specific cases where service tax is required to be paid on reverse charge basis proposed to include transactions such as services provided by individual advocate or support services by government or local authority.

✓ Amendments proposed to put the onus of payment of service tax partly on service provider and partly on service receiver, in specified cases. The said mechanism will be applicable on three specific services as under:

Description of Service	Proportion of service tax payable by service recipient (%)	Proportion of service tax payable by service provider (%)
Hiring of motor vehicle designed to carry passengers, when no applicable abatement is availed	40	50
Supply of manpower for any other service	75	25
Works Contract Service	50	50

- ✓ (effective from enactment of Finance Bill 2012)

Proposed Procedural Amendments

- ✓ Proposal to introduce common simplified forms for registration and return filing under central excise and service tax
- ✓ Periodicity of filing of service tax returns proposed to be based on the turnover of the previous year
- ✓ **The above proposals will be introduced after seeking comments from trade and industry**

The following amendments will be applicable from 1st April 2012

Changes in Rates of Service Tax

- ✓ The rate of service tax has been increased from 10% to 12%.
- ✓ Rate of service tax, where certain service providers have an option, is revised as under:
  - New slabs proposed for services in relation to purchase and sale of foreign currency including money changing
  - Service tax on works contract services under the composition scheme to be increased from 4% to 4.8%
  - Services provided by a life insurance service provider in cases where the entire premium is not towards risk cover, in the first year to increase from 1.5% to 3%.
  - 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 12% with an abatement of 60%
- ✓ The above changes are effective from 1 April 2012

Amendments in Service Tax Rules

The below change will be effective from 1st April 2012

- ✓ The time period provided in rule 4A for issuance of invoice is being increased to 30 days. For banks and financial institutions providing banking and other financial services, the period shall be 45 days
- ✓ Provisions relating to payment of service tax not applicable in case of exports where consideration is received within specified timelines.
- ✓ Individuals and partnership firms were required to pay service tax on receipt basis on specified taxable services. However, the same has been made optional for all taxable services for individuals and firms having a turnover up to Rs. 50 lacs in previous financial year. The turnover for this purpose shall include the turnover of the whole entity from all the service providing locations.
- ✓ Adjustment of excess service tax paid on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of exemption notification to be allowed without any restriction as against prevailing monetary limit Rs. 1 Lac

Amendments in Point of Taxation Rules, 2011

The below change will be effective from 1st April 2012

- ✓ "Date of payment" for determining POT to be the earlier of date on which payment is entered in the books of account or is credited to the bank account of the person liable to pay service tax.
- ✓ To give an option to determine the point of taxation in respect of advances up to **Rs. 1,000 received in excess of the amount indicated in the invoice**, on the basis of invoice or completion of service rather than payment
- ✓ Incorporate a new residual rule to ascertain point of taxation in cases where the same cannot be ascertained by the rules prescribed.

Amendments in CENVAT Credit Rules, 2004

The below change will be effective from 1st April 2012

- ✓ CENVAT credit of excise duty paid on motor vehicles (except for motor cars, specially designed motor vehicles like ambulances, motor cycles, buses, etc.) to be available to all service providers and manufacturers, as credit of duty paid on capital goods.

- ✓ Services falling under rent a cab services and supply of tangible goods relating to motor vehicles qualify to be input services (except for specially designed motor vehicles like ambulances, motor cycles, buses, etc.).
- ✓ Services received by an insurance company in respect of motor vehicle insured or reinsured by the company and by motor vehicle manufacturers in relation to insurance, repair, reconditioning, etc. of motor vehicles will be an input service
- ✓ CENVAT credit of excise duty paid on inputs and capital goods received by output service providers will be available subject to maintenance of documentary evidence of delivery and location of inputs and capital goods.
- ✓ Refund of unutilized CENVAT credit on inputs/input services shall be available in the ratio of export turnover to total turnover and co-relation between export sand the inputs/input services used in such exports will not be required
- ✓ Amount payable on exempted goods / exempted services, in cases where CENVAT credit on inputs / input services is not reversed, is proposed to be increased to 6% of the value of exempted goods / services.
- ✓ Provisions relating to reversal of CENVAT credit equal to 20% of the credit availed applicable to insurance service providers to be omitted.
- ✓ Provisions relating to distribution of CENVAT credit by an Input Service Distributor have been amended to include new conditions in respect of the following
  - Services wholly used in a particular unit
  - Services used in more than one unit, pro-rata allocation prescribed.
- ✓ New provisions introduced for transfer of unutilized CENVAT credit on SAD by one unit of a manufacturer to its other units on quarterly basis.

<u>The below change will be effective from 17 March 2012</u>

- ✓ Reversal of CENVAT credit in respect of removal of used capital goods as such or as waste or scrap by manufacturer or provider of output services to be the higher of transaction value or CENVAT credit relevant to the depreciated value, as prescribed.
- ✓ Reversal if CENVAT wrongly taken, credit before utilization of the same, will not attract interest

CENTRAL EXCISE DUTY

Changes in Rates of Duty

- ✓ The standard rate of excise duty for non petroleum products has increased from 10% to 12%

- ✓ Concessional rate of excise duty of 5% on non-petroleum products is being increased to 6%

- ✓ The lower rate of 1% on non-petroleum products is being increased to 2%. However, precious metal jewellery, coal and fertilizers would remain at 1%.

Sector Specific Rate Changes

- ✓ Rate of excise duty on cement has been modified. Ad valorem duty has been revised for various types and packages. Portland cement has been notified for valuation with reference to RSP subject to abatement of 30%.
- ✓ The excise duty on branded ready-made garments and textile made-ups has been increased from 10% to 12%.The tariff value for these items has been revised and an abatement of 70% compared to 55% earlier.
- ✓ Precious Metals
    - Unbranded articles of jewellery (except articles of silver jewellery) earlier exempt will now be subjected to excise duty of 1% ad valorem.
    - Excise duty will be chargeable on articles of jewellery (except articles of silver jewellery) based on tariff value which will be equal to 30% of the transaction value declared on the invoice.
    - Excise duty on gold jewellery sold from EOUs to DTA has been increased from 5% to 10%.
    - Gold coins of purity 99.5% and above and silver coins of purity 99.9% and above provided exemption from excise duty, when manufactured from gold or silver on which appropriate duty of customs and excise has been paid.
    - Excise duty on refined gold is being increased from 1.5% to 3%

- ✓ Excise rate on tobacco products has been increased
- ✓ Refills and inks used for the manufacture of writing instruments of value not exceeding Rs.200 per piece are being fully exempted from excise duty subject to actual user condition.
- ✓ Exemption limit on footwear is being enhanced from Rs.250 per pair to Rs.500 per pair. Footwear above Rs.500 per pair would attract excise duty of 12%.
- ✓ Full exemption from excise duty is being provided to food preparations containing fruits and vegetables, which are prepared in a hotel, restaurant or a retail outlet, whether or not such food is consumed in such hotels/restaurants/retail outlets.
- ✓ Exemption from excise duty is being restored on intra ocular lens.
- ✓ All the above mentioned rate changes are applicable from 17.03.2012

- ✓ Other changes in rate

Description of Goods	Up to 16th March 2012	from 17th March 2012
Wafer biscuit	5	6
Biscuits	4	6
Pastries and Cake	5	6
Microprocessor	5	6
CFL	5	6
Battery packs supplied to manufacturer of electric vehicles	10	6
Specific part of Hybrid vehicles	10	6
LED Lamp	10	6
Parts of mobile phones used as spare	10	2
Iodine	10	6
Matches manufactured by semi-mechanized units	10	6
Processed food products of soya	10	6

✓ Certain Commodity specific rate changes

Sr. No.	Commodities	CETSH No.	Old rate wide notification no. 006/2010 CE Dated 27.02.2011	New Rate wide notification no. 018/2012 Dated 17/03/2012
01	Foam Roll & Laminate Roll	39201012	10%	12%
02	Waste & Scrap of polymers of ethylene	39151000	10%	12%
03	Aluminum Ingots	76011010	10%	12%
04	Aluminum Scrap	76020090	10%	12%
05	Aluminum Billets	76011020	10%	12%
06	Aluminum Alloy Ingots	76012010	10%	12%
07	Aluminum Alloy Billets	76012020	10%	12%
08	Aluminum Dross (Slag)	26204010	10%	12%
09	Other (Aluminum Not Alloyed)	76011090	10%	12%
10	Other (Aluminum Alloyed)	76012090	10%	12%
11	Aluminum Waste & Scrap	76020010	10%	12%
12	Gears	84834000	10%	12%
13	Shaft	84831099	10%	12%
14	Waste & Scrap of Iron & Steel	72044100	10%	12%
15	Calcined Bouxite	26020020	10%	10%
16	PSC Cement Pole	68109990	10%	12%
17	Petkok	27131100	14%	14%
18	Petroleum Bitumen	27132000	14%	14%

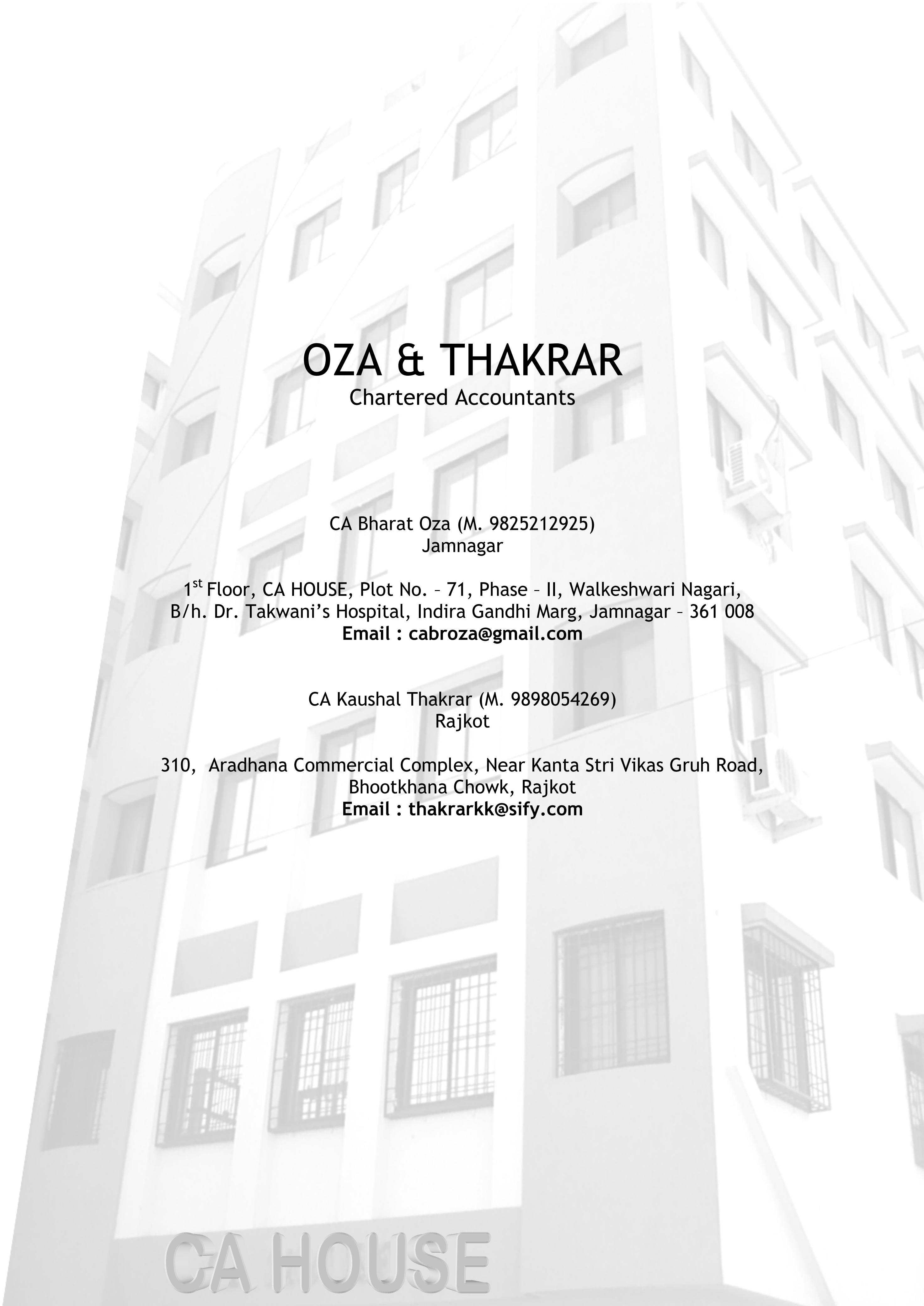
CUSTOM DUTY

- ✓ Peak rate of customs duty for non-agricultural products retained at 10%
- ✓ Education cess on CVD component of customs duty has been exempted, which will result in marginal reduction of the total customs duty
- ✓ Exemption from BCD, CVD and SAD is extended to:
  - Equipment imported for road construction projects awarded by Metropolitan Development Authorities
  - Tunnel excavation and specified lining equipment
  - Tunnel boring machines and parts thereof used for hydel and road projects for all infrastructure projects
  - Full exemption from basic customs duty and CVD is being extended on steel tube & wire, cobalt chromium tube, Hayness Alloy-25 and polypropylene mesh for the manufacture of coronary stents/coronary stent systems and artificial heart valves subject to actual user condition.
- ✓ Full exemption from BCD is extended to:
  - Initial setting up and substantial expansion of fertilizer projects
  - Natural gas/ liquefied natural gas imported for power generation by a power generation company
  - Uranium concentrate, sintered natural uranium dioxide, sintered uranium dioxide pellets for generation of nuclear power
  - Equipment for coal mining projects
  - New and retreaded aircraft tyres
  - Parts of aircraft and testing equipment for maintenance and repair of aircraft imported by third-party MRO units
  - Tri-band phosphor
  - Waster paper
  - Lithium ion batteries for the manufacture of battery packs for supply to electric or hybrid vehicle manufacturers
  - Aramid yarn and fabric when used in the manufacture of bullet proof helmets for supply to defense and police.
  - LCD and LED TV panels of 20 inches and above

- ✓ BCD at concessional rate of 5% under Project Import Scheme is extended to:
  - Import of goods for setting up of Green House for cultivation of horticulture and floriculture produce
  - Installation of mechanized handling systems & pallet racking systems for handling horticultural produce.
- ✓ Exemption from CVD
  - Unconditional exemption of CVD on import of foreign going vessels from 1 March 2011 to 17 March 2012
  - Conditional exemption for import of vessel in India.
- ✓ Exemption from SAD
  - Specified equipment for setting up of solar thermal projects
  - LEDs required for the manufacture of LED lamps
- ✓ For availing exemption from SAD on subsequent sale, importer is required to declare the following:
  - State of destination where the goods are intended to be sold for the first time after import and
  - VAT registration number
- ✓ Baggage allowance increased from Rs. 25,000 to Rs. 35,000 to passengers of Indian origin and for children up to 10 years increase from Rs.12,000 to Rs.15,000
- ✓ Change in rate:

Description of Goods	Up to 16th March 2012	from 17th March 2012
Isolated soya protein and soya protein concentrate	30	10
Iodine	5	2.5
Probiotics	10	5
Six specified life saving drugs/vaccines and their bulk drugs	10	7.5
Specified coffee plantation and processing machinery	7.5	5
Coffee brewing and vending machines (commercial type)	10	5
Specified water soluble fertilizers	7.5	5
Specified soluble and liquid fertilizers, other than urea	5	2.5
Railway safety (Train Protection and Warning System) equipment and railway track laying machines	10	7.5

Description of Goods	Up to 16th March 2012	from 17th March 2012
Machinery and instruments for surveying and prospecting of mines	10	7.5
Titanium dioxide	10	7.5
Completely Built Units (CBUs) of large cars/ MUVs/ SUVs	60	75
Gold ores & concentrates for use in mfg of gold	1	2
Gold dore bars	1	2
Gold bars, other than tola bars	2	4
Non-standard gold	5	10
Platinum	2	4
Cut and polished coloured gemstones	NIL	2
non-alloy steel	5	7.5
Boric acid	5	7.5
Digital still cameras	NIL	10
shuttleless looms, alongwith parts and components for their manufacture	5	NIL
automatic silk-reeling and processing machinery and raw silk testing equipments	5	NIL
wool waste and wool tops	10/15	5
Titanium dioxide is being	10	7.5
Marine seawater pumps with fibre impellers and Automatic fish/prawn feeders for aquaculture	10	5



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