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Union Budget

2012-2013

Hon. Finance Minister **Mr. Pranab Mukherjee** introduced the Finance Bill in the parliament on 16-03-2012. Major amendments are explained in this booklet. Most of amendments will be effective only after the Finance Bill becomes an Act.

THE BUDGET 2012-13

HIGHLIGHTS

1. Income tax exemption limit raised from Rs 180000 to Rs 200000; upper limit of 20% tax slab raised from Rs 8 lacs to Rs 10 lacs.
2. Interest from savings bank accounts deductible upto Rs 10000; deduction upto Rs 5000 for preventive health check-up.
3. Turnover limit for compulsory tax audit for SMEs raised from Rs 60 lacs to Rs 1 crore.
4. STT reduced from 0.125% to 0.1%.
5. Senior citizens without business income exempt from advance tax.
6. 15% rate for dividends from foreign companies extended for FY 2012-13.
7. TCS on cash purchase of bullion and jewellery.
8. TDS on purchase of immovable property above specified limit.
9. Withholding tax rate on interest on ECB reduced from 20% to 5% for 3 years for specified sectors.
10. General Anti Avoidance Rule being introduced to counter aggressive tax avoidance arrangements.
11. Re-opening of tax assessments upto 16 years in case of overseas assets.
12. White paper on Black Money to be introduced in the current session of Parliament.
13. No change in corporate tax rate and tax structures.
14. Cascading effect of DDT in a multi-layer corporate structure removed.
15. A number of measures proposed to deter generation and use of unaccounted money.
16. Service tax rate increased from 10% to 12%
17. All services to attract service except those in the negative list.
18. General excise rate to be increased from 10% to 12%.
19. Common tax code for Excise and Service tax proposed.
20. Relief in indirect taxes to sectors under stress; agriculture, infrastructure, mining, railways, roads, civil aviation, manufacturing, health and nutrition, and environment get duty relief.

INCOME TAX

Rates of Income Tax (w.e.f. A.Y. 2013-14)

1) Individual (other than senior citizen and very senior citizen) HUF, AOP, and BOI, whether incorporated or not, and artificial juridical person:

Up to Rs.2,00,000	NIL
Rs.2,00,001 to 5,00,000	10 %
Rs. 5,00,001 to 10,00,000	20%
Above Rs. 10,00,000	30%

Surcharge · NIL Education cess : 2%
Secondary and Higher Education Cess : 1%

2) **Senior Citizen :** (whose age is 60 years or more but less than 80 years as on 31-03-2013)

Up to Rs.2,50,000	NIL
Rs.2,50,001 to Rs.5,00,000	10 %
Rs.5,00,001 to Rs.10,00,000	20 %
Above Rs.10,00,000	30 %

Surcharge : NIL Education cess : 2%
Secondary and Higher Education Cess : 1%

3) **Very Senior Citizen :**
(Whose age is 80 years or more as on 31-3-2013)

Up to Rs. 5,00,000	NIL
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

Surcharge : NIL Education cess : 2%
Secondary and Higher Education Cess : 1%

CHARITABLE TRUST

Amendment in Section 13 (w.e.f. A.Y. 2009-10)

New Sub-clause (viii) to Section 13 is inserted to proposal that the total income of a charitable trust shall not be exempt only in the previous year in which the aggregate value of receipt from commercial activities exceeds Rs. 25 lacs.

NON RESIDENT

Income Deemed to accrue or arise in India [Section 9 and 195]

I **w.e.f. 01-04-1962**

Section 9 of the Income Tax provides cases of income, which are deemed to accrue or arise in India. This is a legal fiction created to tax income, which may or may not arise in India and would not have been taxable but for the deeming provision created by this section.

Proposed amendments are in the following manner :-

(i) Section 9(1)(i) is proposed amended to clarify that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

(ii) Section 9(1)(i) is proposed to be amended to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

(iii) Consequential amendments are also proposed in section 2(14) and 2(47) explained hereinabove.

Section 195 of the Income Tax Act requires any person to deduct tax at source before making payments to a non resident if the income of such non resident is chargeable to tax in India.

(iv) Section 195(1) is proposed to be amended to clarify that obligation to comply with sub section (1) and to make deduction there under applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non resident, whether or not the non resident has :

(a) a residence or place of business or business connection in India, or

(b) any other presence in any manner whatsoever in India.

These amendments will take effect retrospectively from 1st April, 1962 and will accordingly apply in relation to the assessment year 1962-63 and subsequent assessment years.

II. **w.e.f. 01-06-1976 (A.Y. 1977-78)**

Section 9(1) (vi) provides that any income payable by way of royalty in respect of any right, property or information is deemed to be accruing or arising in India. The term "royalty" has been defined in Explanation which means consideration received or receivable for transfer of all or any right in respect of certain rights, property or information. Conflicting decisions of various courts in respect of income in nature of royalty have been rendered.

(1) Section 9(1)(vi) is proposed to be amended to clarify to that the consideration for use or right to use of computer software is royalty by clarifying that transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including

granting of a licence) irrespective of the medium through which such right is transferred

(2) Section 9(1) (vi) is proposed to be amended to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not :-

(a) the possession or control of such right, property or information is with the payer,

(b) such right, property or information is used directly by the payer.

(c) the location of such right, property or information is in India.

(3) Section 9(1)(vi) is proposed to be amended to clarify that the term 'process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret

TRANSFER PRICING PROVISIONS

(A) Advance Pricing Agreement (APA) [Section 92CC and 92CD] (w.e.f. 01-07-2012)

Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APAs offer better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach. New sections 92CC and 92CD are proposed to be inserted in the Act to provide a detailed framework for advance pricing agreement under the Act.

(B) Examination by the Transfer Pricing Officer of international transactions not reported by the Assessee. [section 92CA][w.e.f. 01-06-2002 / 01-07-2012)

At present the Transfer Pricing Officer (TPO) has limited power to determine Arms Lenth Price (ALP) of international transactions which are reported by the tax payer. The determination of ALP of international transaction not reported by the tax payer is open to challenge.

It is proposed to amend section 92CA of the Act retrospectively to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E of the Act. This amendment will take effect retrospectively from 1st June, 2002.

It is also proposed to provide an explanation to effect that due to retrospective amendment, no reopening of any proceeding would be undertaken only on account of such an amendment

(C) Transfer Pricing Regulations to apply to certain domestic transactions [various sections](w.e.f. A.Y. 2013-14)

Section 40A of the Act empowers the Assessing Officer to disallow unreasonable expenditure incurred between related parties. However, no specific method to determine reasonableness of expenditure or fair market value to re-compute the income in such related transactions is provided under these sections. With a view to provide objectivity in determination of income from domestic related party transactions and determination of reasonableness of expenditure between related domestic parties it is proposed to amend certain provisions of the Act to provide applicability of transfer pricing regulations (including procedural and penalty provisions) to transactions between related resident parties for the purposes of computation of income, disallowance of expenses etc. as required under provisions of sections 40A, 80-IA, 10AA, 80A, sections where reference is made to section 80-IA, or to transactions as may be prescribed by the Board, if aggregate amount of all such domestic transactions exceeds Rupees 5 crore in a year. It is further proposed to amend the meaning of related persons as provided in section 40A to include companies having the same holding company.

(D) Determination of Arm's Length Price (ALP) [section 92C]

(w.e.f. A.Y.2002-03)

Section 92 (1) provides a set of methods for determination of Arm's Lenth Price (ALP). Incase of variation of ALP as determined by TPO and as determined by the Tax Payer, a tolerance range of 5% is provided. Various courts have interpreted it differently. It is proposed to amend the Income Tax Act to provide clarity with retrospective effect in respect of first proviso to section 92C(2) as it stood before its substitution by Finance Act (No.2), 2009 so that the tolerance band of 5% is not taken to be a standard deduction while computing Arm's Length Price and to ensure that due to such retrospective amendment already completed assessments or proceedings are not reopened only on this ground.

It is also proposed to amend the Income Tax Act to provide clarify that second proviso to section 92C shall also be applicable to all proceedings which were pending as on 01.10.2009 [The date of coming in force of second proviso inserted by Finance (No.2) Act, 2009]. The amendments will take effect retrospectively from 1st October. 2009.

(E) Tolerance band for ALP (w.e.f. A.Y. 2013-14)

The existing section 92C provides for the tolarance limit of 5% in case of variation of ALP as determined by TPO and as determined by the tax payer, where no adjustment will be made in ALP.

It is proposed to amend Section 92C (2) of the Act, so as to provide an upper ceiling of 3% in respect of power of Central Government to notify the tolerance range for determination of arms length price.

(F) Penalty in Transfer Pricing Sec. 271AA (w.e.f. 1-7-2012)

It is proposed to amend section 271AA to provide levy of penalty at the rate of 2% of the value of the international transaction, if the taxpayer.-

(i) fails to maintain prescribed documents or information or;

(ii) fails to report any international transaction which is required to be reported, or;

(iii) maintains or furnishes any incorrect information or documents. This penalty would be in addition to penalties in section 271BA and 271G.

(G) Reassement in Transfer Pricing Sec. 147 (w.e.f. 1-7-2012)

Section 147 of the Act, provides for reopening of the cases of the previous years, if any income chargeable to tax has escaped assessment. It is proposed to amend Section 147 of the Act, to provide that in all cases where it is found that an international transaction has not been reported either by non-filing of report or otherwise by not Including such transaction in the report mentioned in section 92E then such non-reporting would be considered as a case of deemed escapement of income and such a case can be reopened under section 147 of the Act

(H) Appeal against the directions of the Dispute Resolution Panel (DRP) (w.e.f. 1-7-2012)

It is proposed to amend the provisions of section 253 and section 254 of the Income-tax Act to provide for filing of appeal by the Assessing Officer against an order passed in pursuance of directions of the DRP in respect of an objection filed on or after 1st July, 2012.

(I) Power of the DRP to enhance variations (w.e.f. A.Y. 2009-10)

It is proposed to insert an Explanation in the provisions of Section 144C to clarify that the power of the DRP to enhance the variation shall include and shall always be deemed to have Included the power to consider any matter arising out of the assessment proceedings relating to the draft assessment order This power to consider any issue would be irrespective of the fact whether such matter was raised by the eligible assessee or not.

BUSINESS INCOME

Initial depreciation to the power sector : (w.e.f. A.Y. 2013-14)

Section 32(1)(iia) provides for allowance of initial depreciation (in addition to normal depreciation) at the rate of 20% of the actual cost on new machinery or plant to the assessee engaged in the business of manufacture or production of any **article or thing** in the year of acquisition. Business of power generation and distribution of power did not qualify for this benefit. Now it is proposed to amend this section to provide that an assessee engaged in the business of generation or generation and distribution of power shall also be allowed initial depreciation at the rate of 20%

Deduction for scientific research and development : (w.e.f. A.Y. 2013-14)

Under the existing provisions of Section 35(2AB) of the Income-tax Act, a company is allowed weighted deduction at the rate of 200% of expenditure (not being in the nature of cost of any land or building) incurred on approved in-house research and development facilities This deduction is available in respect of any expenditure incurred by a company up to 31st March, 2012.

It is now proposed to extend the benefit for a further period of five years i.e. up to 31st March, 2017.

Deduction in respect of capital expenditure u/s. 35AD: (w.e.f. A.Y. 2013-14)

Under the existing provisions of section 35AD, 100% deduction is available in respect of the whole of any expenditure of capital nature incurred wholly and exclusively, for the purposes of the **specified business** during the previous year in which such expenditure is incurred It is proposed to include the following three new businesses as **specified business** for the purposes of 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.

It is also proposed that the date of commencement of operations for availing Investment linked deduction in respect of the three new specified businesses shall be on or after 1st April, 2012.

It is also proposed that the following specified businesses commencing on or after the 1st of April, 2012 shall be allowed a deduction of 150% of the capital expenditure under section 35AD of the Income-tax Act, namely:-

(i) setting up and operating a cold chain facility;

(ii) setting up and operating a warehousing facility for storage of agricultural produce;

(iii) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;

(iv) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and

(v) production of fertilizer in India.

Under the existing provision the investment-linked deduction under section 35AD is allowed to an assessee engaged in the business of building and operating a hotel whereby the deduction is not granted where the hotel owner may get the hotel operated through an outsourcing arrangement.

It is now proposed to provide a suitable clarification so that a hotel owner continues to be eligible for the deduction under section 35AD if he, while continuing to own the hotel get it operated by a third person. (w.e.f. A.Y 2011-12)

Deduction for expenditure incurred on agricultural extension project u/s. 35CCC (w.e.f. A.Y. 2013-14)

It is proposed to insert a new provision in the Income-tax Act to allow weighted deduction of 150% of the expenditure incurred on agricultural extension project. The agricultural extension project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines.

Deduction for expenditure for skill development u/s. 35CCD (w.e.f. A.Y. 2013-14)

It is proposed to insert a new provision In the Income-tax Act to provide deduction of 150% of expenses (not being expenditure in the nature of cost of any land or building) incurred on skill development project. The skill development project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines.

Disallowance of business expenditure on account of non/short deduction of tax u/s. 40(a)(ia) (w.e.f. A.Y. 2013-14)

Provisions of Chapter XVII-B of the Income-tax Act provides that a person Is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold limit. In case of non/short deduction of tax in accordance with the provisions of that Chapter, he is deemed to be an assessee in default under section 201(1) in respect of the amount of such non/short deduction.

However, section 191 of the Act provides that the deductor cannot be treated as assessee in default in respect of non/short deduction of tax if the payee has discharged his tax liability.

It Is proposed to amend section 40(a)(ia) to provide that where an assessee makes payment of the nature specified in the said section to a resident payee without deduction of tax and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes and filing of his Return of Income by the payee, and obtaining CA Certificate in this respect, then, for the purpose of allowing deduction of such sum, it shall be deemed that the assessee has deducted and paid the tax on such sum.

Turnover or gross receipts for tax audit and presumptive taxation u/s. 44AB and 44AD (w.e.f. A.Y. 2013-14)

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 Rs. 60 lacs and in case of a person carrying on a profession, if the total sales, turnover or gross receipts in the previous year exceed Rs. 15 lacs. It is now proposed to increase the threshold limit of total sales, turnover or gross receipts, specified under section 44AB for getting accounts audited, from Rs 60 lac to Rs. 1 crore in the case of persons carrying on business and from Rs. 15 lacs to Rs. 25 lacs in the case of persons carrying on profession It is also proposed that for the purpose of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would also be increased from Rs. 60 lacs to Rs. 1 crore.

Presumptive taxation not to apply to professionals etc: u/s. 44AD (w.e.f. A.Y. 2011-12)

It is proposed to amend section 44AD to clarify that the presumptive scheme of taxation 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 or a person carrying on any agency business. This amendment is proposed from retrospective effect.

CAPITAL GAIN

Transactions not regarded as transfer u/s. 47 (w.e.f. A.Y. 2013-14)

In the case of amalgamation, where the amalgamated company itself is the shareholder in the amalgamating company it shall not be necessary for the amalgamated company to issues shares. A similar relaxation will apply to cases of demerger also.

Cost with reference to certain modes of acquisition u/s. 49(1)(iii)(e) (w.e.f. A.Y. 1999-2000)

In the following cases where any assessee gets assets, the cost of such assets shall be deemed to be the cost of the person who transfers such assets on fulfilling certain conditions specified u/s 47(xiii), 47(xiiib) and 47(xiv).

1) Where a firm is succeeded by a company in the business carried on by the firm as a result of which assets are transferred by the firm to the company.[Sec.47(xiii)]
2) Where a private limited company or unlisted public company is converted into Limited Liability Partnership as a result of which capital assets or intangible assets are transferred to LLP [Sec.47(xiiib)]
3) Where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which assets are transferred by the sole proprietary concern to the company.[Sec.47(xiv)]

Fair Market Value to be considered as value of consideration u/s. 50D (w.e.f. A.Y. 2013-14)

Where a capital asset is transferred by an assessee and consideration received or accrued is not ascertainable or can not be determined for the calculation of capital gain tax, the fair market value of that asset on the date of transfer shall be deemed to be the full value of consideration received or accrued as a result of such transfer.

Capital Gain on transfer of Agricultural Land u/s. 54B (w.e.f. A.Y. 2013-14)

As per Sec.54B if an agricultural land is transferred which was used by the assessee or his parent for agricultural purposes, the capital gain arising on such transfer is not chargeable to tax on certain conditions prescribed in said section Now this benefit is also available even if such agricultural land was used and transferred by the HUF.

Capital gain on transfer of residential property not to be charged in certain cases u/s. 54GB (w.e.f. A.Y. 2013-14)

It is proposed to insert new section 54GB so as to provide relief from long term capital gains tax to an individual or HUF on sale of residential house or a plot of land in case of investment of net consideration in the equity shares of eligible SME company manufacturing an article or a thing and such sums is used for the purpose of purchase of new plant & machinery subject to fulfillment of certain conditions

Reference to Valuation Officer u/s. 55A (w.e.f. 1-07-2012)

At present the Assessing Officer is empowerd to make a reference to valuation cell if in his opinion the value claimed by assessee is lower that its fair market value when the assessee supports the value of capital assets by registered valuer's reports Hence, for valuation report as on 1-4-1981 filed by the assessee, if in opinion of assessing officer the value was more, then he was not empowered to make a reference. It is proposed to amend the section whereby assessing officer will be able to make a reference to valuation cell if the value claimed by assessee is in "variance with its fair market value".

OTHER SOURCES

Change in the meaning of a relative u/s. 56 (w.e.f. 1-10-2009)

There is no change in the definition of a relative of individual where as there is change in defination of relative of HUF. Accordingly any member of a HUF will be considered as a relative.

Share premium in excess of Fair Market value u/s. 56(2) Clause (viib) (w.e.f. A.Y. 2013-14)

As per the new clause (viib) where a company other than a company in which public are substantially interested receives any consideration for issue of shares from a resident person and which exceeds the face value of such shares, the excess of consideration over the fair market value (defined) of shares shall be considered as income in the previous year in which such consideration is received.

Provided that this clause shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.

DEEMED INCOME

Cash Credit etc. u/s. 68 (w.e.f. A.Y. 2013-14)

New proviso has been inserted in section 68 which provides that if any sum which consists share application money, share capital, share premium or any such amount by whatever name called, found to be credited in the books of the company in which public are not substantially interested, the same sum shall be included in the income of the company. However if the following condition is satisfied, the sum shall not be included in the income of the company.

If the person who is resident and in whose name such sum is credited offers an explanation about the nature and source of such sum credited and such explanation in the opinion of the assessing officer found to be satisfactory

However if the resident person is a Venture Capital Company or Venture Capital Fund the said clause shall not be applicable

DEDUCTIONS

Deduction in respect of Life Insurance Premium u/s. 80C :- (w.e.f. A.Y. 2013-14)

At present the deduction for Life Insurance Premium is allowable for only so much of the premium as is not in excess of 20% of the sum assured. It is proposed that the said 20% is reduced to 10% for insurance policies issued on or after 01.04.2012.

Deduction in respect of health insurance premium / Preventive Health Checkup u/s. 80D :- (w.e.f. A.Y. 2013-14)

(A) At present a deduction of Rs.15000 is allowed for self, spouse and dependent children. Further deduction of Rs.15000 is also allowed for buying health insurance policy in respect of parent. (for senior citizen Rs. 20000) It is proposed that Rs. 5000 included in the overall limit prescribed will be allowed for expenditure for preventive health checkup paid by any mode including cash.

(B) It is proposed that for considering the age limit for senior citizens the age of 65 years or more is reduced to 60 years or more. Similar change is also proposed in section 80DDB regarding medical treatment.

Deduction in respect of donations to certain funds or charitable institutions u/s. 80G :- (w.e.f. A.Y.2013-14)

Clause 5D is inserted whereby it is proposed that the deduction shall not be allowed under section 80G, if an amount exceeding Rs.10000 is paid as donation by way of cash.

Deduction in respect of donations to Scientific Research or rural development u/s. 80GGA :- (w.e.f. A.Y.2013-14)

It is proposed that the deduction shall not be allowed under section 80GGA, if an amount exceeding Rs.10000 is paid as donation by way of cash.

Deductions in respect of profits and gains from industrial undertakings engaged in infrastructure development, etc. u/s. 80-IA :- (w.e.f. A.Y. 2013-14)

At present deduction from profits and gains is allowed to an undertaking which-

(a) is set up for generation and distribution of power at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2012.

(b) Starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2012.

(c) Undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2012.

It is proposed to amend the above provision to extend the terminal date for a further period of one year i.e. 31st March 2013.

The definition of Market Value as given in the explanation provided under sub section 8 of 80-IA is proposed to be amended as follows:

Market Value for the purpose of this section means:

(a) The price that such goods or services would ordinarily fetch in the open market; or

(b) Where the transfer of goods is a specified domestic transaction as specified in section 92BA , the arm's length price as defined in clause(ii) of section 92F.

A proviso is proposed to be inserted in sub section 10 whereby the amount of profit shall be determined having regard to the arm's length price as defined in clause (ii) of section 92F in case of a specified domestic transaction referred to in section 92BA.

Deduction in respect of other incomes u/s. 80TTA (w.e.f. A.Y. 2013-14)

A new section 80TTA is proposed to be inserted whereby a deduction up to Rs.10000 will be granted from interest earned by individual and H.U.F. from savings bank account and post office account. The interest on time deposit is not eligible for such deduction.

GENERAL ANTI AVOIDANCE RULES (GAAR)

Sections 95 to 102 (w.e.f. A.Y. 2013-14)

GAAR proposed to be introduced to curb various tax avoidance arrangements and provide for declaring any arrangement as "impermissible avoidance arrangement" if the main purpose of the arrangement is to obtain tax benefit and it satisfies prescribed conditions such as disproportionate rights or obligations, any misuse or abuse of domestic tax provisions, lack of commercial substance or done for non-bonafide business purposes

- The main purpose of any arrangement would be presumed to be obtaining tax benefit unless proved otherwise by the taxpayer.
- An arrangement will be deemed to lack commercial substance if its substance / effect is inconsistent with its form, involves round trip financing, an accommodating party and elements that have the effect of cancelling each other and disguised transactions or asset location or transaction place or residence is only for obtaining tax treaty benefit Factors like period of holding, payment of taxes (directly or indirectly) and exit route are not relevant to determine commercial substance.
- Wide powers granted to Tax Authorities when GAAR is invoked for an "impermissible avoidance arrangement" which include denial of tax treaty benefits, disregarding or recharacterising steps or the transactions or the accommodating party or other persons or reallocating income or expenditure or revising the place of residence of any party or situs of an asset in any transactions, looking through corporate structure. recharacterising equity or debt or accrual of receipts or expenditure, etc
- The Tax Officer to make a reference to the CIT for invoking GAAR and make determination of a transaction as an impermissible avoidance arrangement If objections of taxpayer received and not construed as tenable, the CIT to refer the matter to an Approving Panel post hearing the taxpayer in a time bound manner (six months as stipulated).
- The Approving Panel to comprise of minimum three officers of the rank of commissioners and above.
- The Approving Panel shall either declare an arrangement to be impermissible or declare it not to be so after examining material and making further inquiry as may be required.
- If the Approving Panel approves the invocation of GAAR and holds the arrangement as "impermissible avoidance arrangement", then the Tax Officer to determine the consequences and pass final order after the approval of the CIT. Thereafter. the first appeal against such order shall lie directly with the Tribunal.
- The period taken by the proceedings before the CIT and Approving Panel shall be excluded from the time limitation for completion of assessment.

ASSESSMENT PROCEDURE AND FILING OF RETURNS

Time limit for return - Proviso to section 139(1) (w.e.f. A.Y. 2012-13)

It is proposed to insert proviso to section 139(1) whereby furnishing of return of income u/s 139 is made mandatory for every resident having any asset (including financial interest in any entity) located outside India The furnishing of return of income by such a resident would be mandatory, irrespective of the fact whether the resident tax payer has taxable income or not

Time limit for submission of report-Expl. to section 139(1) (w.e.f. A.Y. 2012-13)

It is proposed that due date of furnishing of return of income for the assessee required to furnish a report referred to in section 92E (transfer pricing) would be 30th November of that assessment year for all assessees. This extended date for furnishing return was available only to companies up to assessment Year 2011-12

Assessment - Subsection 1D to section 143 (w.e.f. 1-7-2012)

It is proposed to amend the provisions of Income Tax Act to provide that processing of return will not be necessary in a case where notice under section 143(2) (for scrutiny) been issued.

Assessment of Charitable trust - Proviso to Section 143(3) (w.e.f. A.Y. 2009-10)

The 2nd proviso of section 2(15) provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and involves carrying on of any activity in the nature of trade, commerce or business but the aggregate value of receipt from the commercial activities does not exceed Rs 25,00,000/- in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it

Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

It is proposed to amend section 143 so that such an organisation does not get benefit of tax exemption in the assessment in the year in which its receipts from commercial activities exceed the threshold hold limit whether or not the registration or approval granted or notification issued is cancelled or withdrawn

Section 149- Time limit of Reopening (w.e.f. 1-7-2012)

The time limit for issue of notice for reopening an assessment on account of income escaping assessment is maximum 6 years. A new proviso is inserted to propose for reopening of an assessment upto 16 year in cases where the income in relation to any asset (including financial interest in any entity) located outside India chargeable to tax has escaped assessment.

The provisions of section 147 and 149 are procedural in nature and will take effect from 1st July, 2012 for enabling reopening of proceeding 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.

Sections 153A and 153B - Time for completion of assessments and reassessments (w.e.f. 1-7-2012)

It is proposed to extend the time for completion of assessment and reassessment by amending sections 153 and 153B. The existing period and the new extended period for completion of pending proceedings and subsequent proceedings as proposed are as under.

Limitation of time

Proceedings under section	Current time allowed	Proposed period
143(Scrutiny)	21 months from the end of the A.Y.	24 months
143 and 92CA (Transfer Pricing)	33 months from the end of the A.Y.	36 months
148-Reassessment	9 month from the end of the F.Y. in which notice issued	12 months
148 and 92CA	21 months from the end of the F.Y in which notice received	24 months
250 (CIT Appeals) or 254 (Appellate Tribunal) or 263 (Revision by Commissioner)	9 months from the end of the F.Y. in which order received	12 months
250 or 254 or 263 and 92CA	21 months from the end of the F.Y In which order received	24 months

TAX DEDUCTION AT SOURCE (TDS)

Interest on Securities – Section 193(v) (w.e.f. 1-07-2012)

The proposed amendment seeks to enhance non deduction limit of Rs. 2500 to Rs.5000, in a case of Debenture interest

Payment to non resident sportsmen or sports associations – Section 194E (w.e.f. 1-07-2012)

The proposed amendment seeks to add " ENTERTAINER" in this category and seeks to enhance deduction rate from 10% to 20%

Fees for professional or technical services – Section 194J (w.e.f. 1-07-2012)

The proposed amendment seeks to include any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company under this clause.

Payment of compensation – Section 194LA (w.e.f. 1-07-2012)

The proposed amendment seeks to enhance the limit of deduction from Rs. 1 lac to Rs. 2 lac.

Payment on transfer of certain immovable property other than agricultural land – Section 194LAA (w.e.f. 1-10-2012)

The proposed amendment seeks to insert a new provision for deduction of tax at source from payment on transfer of certain immovable property other than agricultural land.

- Transferee is required to deduct 1% as TDS from the payment
- Deduction Limit is Rs. 50 lacs in case of property situated in a specified area and Rs 20 Lacs in case of property situated in any other area.

- Stamp duty valuation be deemed to be the consideration paid or payable if the consideration stated in the document is less than the stamp duty valuation and the transferee is required to deduct the TDS on such stamp duty valuation.
- Document registering authority will not register the document unless transferee produces the proof of deduction and payment thereof in a prescribed form.
- Transferee is not required to obtain TAN

<u>Income by way of Interest from Indian Company engaged in certain business – Section 194LC (w.e.f. 1-07-2012)</u>

The proposed amendment seeks to insert a new provision to deduct TDS @ 5% from the payment of Interest by a specified company to a non Resident not being a company or a foreign company

<u>No TDS in Certain cases – Section 197A (1C) (w.e.f. 1-07-2012)</u>

The proposed amendment seeks to lower the age limit for 15H from 65 years to 60 years.

<u>Consequences of failure to deduct or pay – Section 201 (w.e.f. 1-07-2012)</u>

It is proposed to insert a new proviso to sub section 1 to provide that person shall not be deemed to be an assessee in default if

- The deductee has furnished his return of income u/s. 139
- has taken into account such sum for computing income and
- has paid the tax due and
- Furnishes a certificate from a Chartered Accountant to this effect.

However the Interest shall be payable from the TDS deductible to the date of furnishing of return by the deductee.

Time limit of 4 years is increased to 6 years for making an order for deeming a person to be an assessee in default.

<u>Meaning of "Person responsible for paying" – Section 204 (w.e.f. 1-07-2012)</u>

It is proposed to add, the drawing and disbursing officer or any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum of the Central or State Government to the list of "Person responsible for paying".

<u>Collection at Source – Section 206C (w.e.f. 1-07-2012)</u>

It is proposed to add " Coal or Lignite or Iron ore" to TCS List and TCS will be @ 1%.

It is proposed that the seller of bullion or jewellery has to collect 1% TCS from the buyer in the sale consideration exceeds Rs. 2 lacs received in cash.

Advance payment of Tax – Section 207 (w.e.f. A.Y. 2012-13)

It is proposed that the provision of advance payment of tax shall not apply to a resident individual who is of the age of sixty years or more and not having income from "Profit and gains of business or profession'

Computation of Advance Tax – Section 209 (w.e.f. A.Y. 2012-13)

It is proposed that if TDS or TCS is not made then such TDS or TCS shall not be considered for reducing the advance tax liability

Interest on excess refund – Section 234D (w.e.f. 1-06-2003)

It is proposed that Interest on excess refund is also leviable to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after 01/06/2003.

Levy of Fee for late filing of TDS return – Section 234E (w.e.f. 1-07-2012)

It is proposed to introduce a new section for the levy of fees of Rs 200/- per day (maximum upto the amount of TDS) for delay in late filing of TDS and TCS returns. This fee is to be paid before filing TDS Returns.

OTHER AMENDMENTS

Definition of Related person for the purpose of making an application before Settlement Commission (w.e.f. 1-07-2012)

An application can be filed before the Settlement Commission under the provisions of section 245C of the Income-tax Act

The definition of related person which is currently being used is " . the substantial interest is found to exist, where a person holds more than 20% shares or 20% share in profits, **at any time during the previous year**". It is proposed to provide that the substantial interest should exist as on the **date of the search** in place of at any time during the previous year.

Fee for filing of applications before Authority for Advance Rulings (AAR) (w.e.f. 1-07-2012)

It is proposed to amend the provisions of section 245Q so as to provide for increase in the fee for filing an application for advance ruling from Rs.2500 to Rs.10,000 or such fee as may be prescribed, whichever is higher.

Appeal Against Intimation after processing of TDS statement (w.e.f. 1-07-2012)

It is proposed to provide that the intimation generated after processing of TDS statement shall be appealable under section 246A.

Appeal against the directions of the Dispute Resolution Panel (DRP) (w.e.f. 1-07-2012)

Under the provisions of sub-section (8) of section 144C, the DRP has the power to confirm, reduce or enhance the variations proposed in the draft order The

Income Tax Department does not have the right to appeal against the directions given by the DRP.

It is therefore proposed to amend the provisions of section 253 and section 254 of the Income-tax Act to provide for filing of appeal by the Assessing Officer against an order passed in pursuance of directions of the DRP in respect of an objection filed on or after 1st July, 2012.

Completion of assessment in search cases referred to DRP (w.e.f. 1-10-2009)

It is proposed to provide that in search cases referred to DRP, time limit specified in section 144C will apply, notwithstanding anything in section 153B.

It is also proposed to provide that against such orders, the appeal shall lie directly to ITAT .

Amendment in Section 115A: (w.e.f. 1-07-2012)

A new sub-clause (iiaa) is proposed to be added to clause (a) of sub-section 1 whereby interest received by non-residents/foreign companies in respect of foreign currency loans to specified Indian Companies is proposed to be taxed at special rate of 5% The specified Indian Companies should be engaged in construction of dams, operation of aircrafts production of fertilizers, building ships, toll roads ports including inland ports and other such infrastructure projects

Amendment in Section 115BBA: (w.e.f. A.Y. 2013-14)

A new sub-clause (c) is proposed to be added in sub-section 1 whereby the income received or receivable by an entertainer who is not an Indian Citizen and is a non-resident from his performance in India is proposed to be taxed @ 20%.

The amendment also seeks to enhance the rate of tax on certain income received or receivable by sportsman who is not an Indian Citizen and is a non-resident as well as sports associations or institutions who are non-resident from 10% at present to 20%

Amendment in Section 115BBD: (w.e.f. A.Y. 2013-14)

The amendment seeks to extend concessional treatment of dividend received by an Indian Company from investments made in Foreign Companies wherein it holds at least 26% stake in equity capital, for one more year. Such dividend income shall continue to be taxed @ 15% for A Y 2013-14.

Insertion of new Section 115BBE: (w.e.f. A.Y. 2013-14)

This new section seeks to tax cash credits, unexplained investments, unexplained expenditure, etc. referred to in sections 68 69, 69A, 69B, 69C and 69D @ 30%

Amendment of Section 115JB: (w.e.f. A.Y. 2013-14)

Sub-section 2 is amended so that the certain companies operating in insurance, banking and generation of electricity to which specific Acts apply have been allowed to adopt book profit as depicted by the P & L A/c. prepared under the respective Acts.

Clause (j) is inserted in Explanation 1 whereby the book profit has to be increased by the amount standing in revaluation reserve relating to a revalued asset on its retirement or disposal if the same is not credited to P & L A/c

Amendment of Chapter XII-BA: (w.e.f. A.Y. 2013-14)

The heading of the Chapter has been changed from "Limited Liability Partnerships" to "Persons other than a Company".

Substitution of Section 115JC: (w.e.f. A.Y. 2013-14)

The provisions of Alternate Minimum Tax as applicable to Limited Liability Partnerships from A.Y. 2012-13 have been extended to cover all assesses other than Companies The rate of AMT is 18 5%. However, the applicability is subject to Section 115JEE.

Amendment in Sections 115JD, 115JE & 115JF: (w.e.f. A.Y. 2013-14)

This is a consequential amendment so as to apply the provisions of Chapter XII-BA to all the assessees excluding Companies.

Insertion of Section 115JEE: (w.e.f. A.Y. 2013-14)

This new section has been inserted in Chapter XII-BA to make it applicable to all the assessees other than Companies The provisions of the Chapter have been made applicable to all the assessees other than the Companies if the "adjusted total income" defined in the Chapter exceeds Rs. 20,00,000/-. However, in case of Limited Liability Partnerships the same shall continue to be applicable even if the "adjusted total income" is below the threshold of Rs. 20,00,000/-.

The above section will be applicable only to the person who has availed the deduction from income under Chapter VI-A in respect of certain income and Sec. 10AA.

Amendment of Sec. 115O: (w.e.f. 1-07-2012)

The amendment has been made so as to do away with cascading effect of Dividend Distribution Tax (DDT) in case of multi-tier Corporate holding structure

Amendment in Sec. 115U: (w.e.f. A.Y. 2013-14)

The amendment seeks to tax income received by an investor from venture capital company (vcc)/venture capital fund (vcf) on accrual basis. The law as it stands today used to tax the income on receipt basis giving ample opportunity to investors to defer income and tax thereon for an uncertain period of time

Amendment in Sec. 115VG: (w.e.f. A.Y. 2013-14)

The amendment seeks to increase the presumptive rates at which shipping companies are to be taxed based on the tonnage.

PENALTIES

Penalty on undisclosed Income found during the course of search [Section 271AAA and 271 AAB] (w.e.f. 1-07-2012)

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.

Expediating prosecution proceedings. [various sections](w.e.f. 1-07-2012)

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 expediate 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

Penalty for delay in furnishing TDS and TCS return - u/s. 271H w.e.f. 1-07-2012

A new section is proposed to be inserted to levy penalty ranging from Rs 10,000/- to Rs. 1,00,000/- for furnishing incorrect information or delay in submission of TDS and TCS statement after 1 year of the prescribed due date.

SERVICE TAX

(I) Rate of service tax (w.e.f. 1-04-2012)

a. The rate of service tax has been increased from 10.30% to 12.36 %

b. Consequent to change in the rate of service tax, changes are also being made in specific and compounding rates of tax for services in relation to purchase and sales of foreign currency, service of promotion, marketing and organizing lottery, works contract service, life insurance service and transport of passenger by air.

(II) Introduction of negative list approach. (w.e.f. date to be notified after the Finance Bill receives the assent of the President.)

At present levy of service tax is as per the selective approach. Now it has been changed to comprehensive approach meaning thereby service tax is leviable on all the services except services included in negative list.

Taxation will be based on what is popularly known as "Negative List of Services"

At present 17 services are included in negative list given in Annexure A.

Exemption:

Under the present system there are 88 exemption notifications. With the introduction of negative list, the need for exemption is reduced. Most of the exemptions are covered in negative list, others, wherever necessary have been retained as exemption. Most of the exemptions are proposed to be consolidated in a single mega exemption **34 services are sought to be covered under exemption given in Annexure B.**

Declared Services

There are certain activities which are not in the nature of services are now declared as services and at present 9 such acitivities are declared as services. **The list of which are given in Annexure C.**

(III) **Definition of Service - Section 65B(44) (w.e.f. date to be notified after the Finance Bill receives the assent of the President.)**

For the first time the definition of service is given in the Finance Act 1994. Service' has been defined in clause (44) of the new section 65B and means–

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

The said definition further provides that 'Service' does not include –

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

There are three explanations appended to the definition of 'service'

(IV) **Proposed Amendments in Finance Act, 1994 (effective from enactment of Finance Bill)**

- New Section 67A is being inserted to prescribe the rate of service tax, value of taxable service and rate of exchange shall be the same rate as applicable at the time when the taxable service has been provided.
- New section 72A is being inserted to introduce provisions relating to special audit in service tax law on the lines of section 14A and section 14AA of the Central Excise Act, 1944 meaning thereby special audit can be ordered under specified circumstances.
- Under section 73(1), the time limit for issuance of notice is increased from 1 year to 18 months.

- Section 83,85,86 & 94(2) are being amended to make settlement commission provision, revision mechanism, filing of appeal before commissioner of appeal, revenue appeal before the tribunal and compounding of offence applicable to service tax in line with similar provision contained in Central Excise Act, 1944
- New reverse charge mechanism – As per amended section 68(2) reverse mechanism scheme in respect of three services namely hiring of means of transport, construction and man power supply is proposed which will be notified after the assent of the President and according to the scheme there will be a partly charge on service provider and partly on service receiver.
- In respect of renting of immovable property service, for those service provider who have not paid the service tax, the government has decided to waive the penalty in this category provided the tax payer pay the tax in full alongwith the interest This waiver scheme is applicable for six months from the date of enactment of Finance Bill.

(V) <u>Exemption (effective from the date of enactment of the Finance Bill 2012)</u>

Retrospective exemption have been granted in case of

i. repair of road service (extended for the period 16-6-2005 to 26-7-2009)

ii. management, maintenance or repair services in relation to non commercial government building, (w.e.f. 16-6-2005)

iii. dyeing unit in relation to common effluent treatment plant. (w.e f. 16-6-2005)

(VI) <u>Major Amendments in Cenvat Credit Rules</u>

1. Rule 5 is being replaced with a new rule to simply the procedure for refund of unutilized credit on account of export.
2. Credit is being allowed on certain motor vehicle. Credit for tax paid on supply of such vehicle on rent, insurance and repairs shall also be allowed
3. Credit of insurance and service station service is also allowed to insurance company and manufacturer of motor vehicle.
4. Credit on input or capital goods can now be availed whenever the goods are delivered to service provider instead of goods are brought to the premises of the service provider
5. 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.
6. The rate for cenvat reversal for exempt services has been revised from 5% to 6%.

(VII) Major Amendments In Service Tax Rules

1. The time period for issuance of invoice is being increase from 14 days to 30 days. For Banks and Financial Institution the period shall be 45 days instead of 30 days.
2. Rule 6 (4A) is being amended to allow unlimited amount of permissible adjustment. (at present there is upper limit of Rs. 2 Lac)
3. At present in case of export &, individuals and firms rendering 8 specified services, the liability to payment of service tax is shifted from point of taxation to service tax rules. And now the option of defer payment is allowed to individuals and firm upto a turnover of taxable services of Rs 50 lacs subject to condition that the turnover of taxable services in a previous year was below Rs 50 Lacs
4. A common simplified registration format and a new simplified 1 page common return with Central Excise is being introduced for public comment.
5. The tax payment is proposed to be revised as follows.
   a. Assessees who paid tax of Rs. 25 lakh or more in previous year and new assesses other than individuals and firms: Monthly.
   b. Others : Quarterly

(VIII) Point of Taxation Rules

There are minor changes in point of taxation rules regarding definition of continuous supply of service, date of payment and in case of advance upto Rs. 1000 received in excess of amount of invoice

(IX) Other Changes

1. There are also changes in valuation rules for works contract as well as changes in rates of abatment in certain services

ANNEXURE A : LIST OF SERVICES INCLUDED IN NEGATIVE LIST

(1) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

  (*i*) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government,

  (*ii*) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

  (*iii*) transport of goods or passengers; or

  (*iv*) support services, other than services covered under clauses (*i*) to (*iii*) above, provided to business entities,

(2) services by the Reserve Bank of India;

(3) services by a foreign diplomatic mission located in India;

(4) services relating to agriculture by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(5) trading of goods;

(6) any process amounting to manufacture or production of goods;

(7) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;

(8) service by way of access to a road or a bridge on payment of toll charges;

(9) betting, gambling or lottery;

(10) admission to entertainment events or access to amusement facilities;

(11) transmission or distribution of electricity by an electricity transmission or distribution utility;

(12) services by way of—

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

(13) services by way of renting of residential dwelling for use as residence;

(14) services by way of –

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;

(15) service of transportation of passengers, with or without accompanied belongings, by—

(i) a stage carriage;

(ii) railways in a class other than—

(A) first class; or

(B) an air-conditioned coach,

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and

(vi) metered cabs, radio taxis or auto rickshaws;

(16) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency; or

(B) a courier agency;

(ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or

(iii) by inland waterways;

(17) funeral, burial, crematorium or mortuary services including transportation of the deceased.

ANNEXURE B : SERVICES INCLUDED IN EXEMPTION LIST

1 Services provided to the United Nations or a specified international organization;

2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

3. Services by a veterinary clinic in relation to health care of animals or birds;

4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;

5. Services by a person by way of,—
(a) renting of precincts of a religious place meant for general public; or
(b) conduct of any religious ceremony,

6. Services provided to any person other than a business entity by:-

(a) an individual as an advocate; or

(b) a person represented on and as arbitral tribunals;

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided:-

   (a) to an educational institution by way of catering under any centrally assisted mid – day meals scheme sponsored by Government;

   (b) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of transportation of students or staff;

   (c) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of services in relation to admission to such education,

10 Services provided to a recognised sports body by:-

   (a) an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body,

   (b) another recognised sports body;

11 Services by way of sponsorship of tournaments or championships organized:-

   (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;

   (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India, Special Olympics Bharat;

   (c) by Central Civil Services Cultural and Sports Board;

   (d) as part of national games, by Indian Olympic Association; or

   (e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

12. Services provided to the Government or local authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of:–

   (a) a civil structure or any other original works meant predominantly for a non-industrial or non-commercial use:

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) drinking water supply (ii) water treatment (iii)sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65 B of the said Finance Act;

13. Services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of:-

(a) road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public,

(c) pollution control or effluent treatment plant, except located as a part of a factory; or

(d) electric crematorium;

14. Services by way of erection or construction of original works pertaining to:-

(a) airport, port or railways;

(b) single residential unit otherwise as a part of a residential complex;

(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages,

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films,

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17 Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below one thousand rupees per day or equivalent;

19 Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a licence to serve alcoholic beverages;

20 Services by way of transportation by rail or a vessel from one port in India to another of the following goods:-

(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(c) defence or military equipments;

(d) postal mail, mail bags or household effects;

(e) newspaper or magazines registered with Registrar of Newspapers;

(f) railway equipments or materials;

(g) agricultural produce,

(h) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(i) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of.–

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire:-

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by:-
  - (a) air, embarking or terminating in an airport located in the state of Arunachal Pradesh. Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Baghdogra located in West Bengal; or
  - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;

24. Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to the Government or a local authority by way of:-
  - (a) repair of a ship, boat or vessel;
  - (b) effluents and sewerage treatment;
  - (c) waste collection or disposal;
  - (d) storage, treatment or testing of water for drinking purposes; or
  - (e) transport of water by pipeline or conduit for drinking purposes;

26 Services of general insurance business provided under following schemes:-
  - (a) Hut Insurance Scheme;
  - (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
  - (c) Scheme for Insurance of Tribals;
  - (d) Janata Personal Accident Policy and Gramin Accident Policy;
  - (e) Group Personal Accident Policy for Self-Employed Women;
  - (f) Agricultural Pumpset and Failed Well Insurance;
  - (g) premia collected on export credit insurance;
  - (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
  - (i) Jan Arogya Bima Policy;
  - (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
  - (k) Pilot Scheme on Seed Crop Insurance;
  - (l) Central Sector Scheme on Cattle Insurance;
  - (m) Universal Health Insurance Scheme;
  - (n) Rashtriya Swasthya Bima Yojana; or
  - (o) Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

(a) the total business turnover had not exceeded fifty lakh rupees during the preceding financial year; and

(b) a period of three years has not lapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or an entity registered as a society to own members by way of reimbursement of charges or share of contribution.–

(a) as a trade union;

(b) for the provision of exempt services by the entity to third persons; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities.–

(a) a sub-broker or an authorised person to a stock broker;

(b) an authorised person to a member of a commodity exchange;

(c) a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund,

(d) a selling or marketing agent of lottery tickets to a distributer or a selling agent;

(e) a selling agent or a distributer of SIM cards or recharge coupon vouchers; or

(f) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area;

30. Carrying out an intermediate production process as job work in relation to:–

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from.–

    (a) departmentally run public telephones;

    (b) guaranteed public telephones operating only for local calls; or

    (c) free telephone at airport and hospitals where no bills are being issued;

33. Services by way of slaughtering of bovine animals;

34. Services received from a service provider located in a non- taxable territory by

    (a) the Government, a local authority or an individual in relation to any purpose other than industry, business or commerce; or

    (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities.

ANNEXURE C : LIST OF DECLARED SERVICES

1. renting of immovable property;
2. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
5. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act,
6. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
8. service portion in execution of a works contract;
9. service 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 part of the activity.

EXCISE

PROPOSALS INVOLVING CHANGES IN RATES OF DUTY

1) The effective rate of excise duty of 10% on non-petroleum products is being increased to 12% with a few exceptions where exemptions/concessions have been given.
2) Concessional rate of excise duty of 5% on non-petroleum products is being increased to 6%.
3) 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%.

PRECIOUS METALS:

1) At present, branded jewellery of precious metals attracts excise duty of 1%. The scope of the levy is extended to include unbranded jewellery within its ambit. However, the duty on such unbranded jewellery would be charged on 30% of transaction value declared in the invoice
2) Unbranded silver jewellery is already exempt. Branded silver jewellery is being exempted from excise duty.
3) Excise duty on gold jewellery sold from EOUs into domestic tariff area (DTA) is being increased from 5% to 10%.
4) Excise duty on refined gold is being increased from 1.5% to 3%.
5) Excise duty on gold produced from copper smelting is being increased from 2% to 3%.
6) Excise duty on silver produced from copper smelting is being reduced from 6% to 4%.
7) Full exemption from excise duty is being provided on articles of goldsmith and silversmith wares of precious metals or of metals coated with precious metals, not bearing a brand name.
8) Gold coins of purity 99.5% and above and silver coins of purity 99 9% and above are being fully exempted from excise duty.

OTHERS:

1) Full exemption from excise duty is being provided to food preparations containing fruits and vegetables falling under Chapter 20, which are prepared in a hotel, restaurant or a retail outlet, whether or not such food is consumed in such hotels/restaurants/retail outlets.
2) Excise duty on parts of mobile phones, other than those cleared to a manufacturer of mobile phones, is being reduced from 10% to 2%, provided no Cenvat credit is taken
3) Excise duty is being reduced from 10% to 6% on:
   (a) Matches manufactured by semi-mechanized units
   (c) Processed food products of soya
4) Exemption from excise duty is being restored on intra ocular lens