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AMENDMENTS BY FINANCE ACT, 2011 AT A GLANCE

1. **Change in Rates of Tax and Surcharge**

I (A) In case of every individual other than the individual referred to in I(B), I(C) and I(D) or in case of Hindu Undivided Family: (Resident as well as Non-resident)

	Total Income	*Rates of Income Tax*
(1)	Where the total income does not exceed ₹ 1,80,000	NIL
(2)	Where the total income exceeds ₹ 1,80,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 1,80,000
(3)	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 8,00,000	₹ 32,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
(4)	Where the total income exceeds ₹ 8,00,000	₹ 92,000 plus 30% of the amount by which the total income exceeds ₹ 8,00,000

I (B) In case of every individual, being a woman resident in India, and below the age of 60 years at any time during the previous year:

	Total Income	*Rates of Income Tax*
(1)	Where the total income does not exceed ₹ 1,90,000	NIL
(2)	Where the total income exceeds ₹ 1,90,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 1,90,000
(3)	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 8,00,000	₹ 31,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
(4)	Where the total income exceeds ₹ 8,00,000	₹ 91,000 plus 30% of the amount by which the total income exceeds ₹ 8,00,000

I (C)   In case of every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year:

	Total Income	***Rates of Income Tax***
(1)	Where the total income does not exceed ₹ 2,50,000	NIL
(2)	Where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,50,000
(3)	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 8,00,000	₹ 25,000 plus 20% of the amount by which the total income exceeds ₹5,00,000
(4)	Where the total income exceeds ₹ 8,00,000	₹ 85,000 plus 30% of the amount by which the total income exceeds ₹8,00,000

I (D)   In case of every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year:

	Total Income	***Rates of Income Tax***
(1)	Where the total income does not exceed ₹ 5,00,000	NIL
(2)	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 8,00,000	20% of the amount by which the total income exceeds ₹5,00,000
(3)	Where the total income exceeds ₹ 8,00,000	₹ 60,000 plus 30% of the amount by which the total income exceeds ₹8,00,000

II. Surcharge on **DOMESTIC COMPANIES** has been reduced from 7.5% to **5%**, ***if the total income exceeds ₹1 crore.***

III. Surcharge on **FOREIGN COMPANY** has been reduced from 2.5% to **2%**, ***if the total income exceeds ₹1 crore.***

IV. Rate of Minimum alternate tax under section 115JB has been increased from 18% to 18.5%.

2. For the purposes of the Income-tax Act, “charitable purpose” has been defined in section 2(15) which, among others, includes “the advancement of any other object of general public utility”. However, “the advancement of any other object of general public utility” is not a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity and receipts from such activities is ₹ 10 Lakhs or more in the previous year. **Limit of ₹10 lakhs is increased to ₹ 25 lakhs.**

3. **Section 10(45)** has been introduced to provide that any allowance or perquisites, as notified by Government, paid to the Chairman or retired chairmen or any other member or retired member of the Union Public Service Commission, shall be exempt from tax.

4. **Section 10(46)** has been introduced to provide exemption to specified income of notified body or authority or board or trust or commission.

   <u>Conditions for exemption are:</u>
   (a) The body, authority, board, trust or commission is notified for this purpose by Central Government,
   (b) Such entity is not engaged in any commercial activity; and
   (c) Such entity is established or constituted by Central, State or Provincial Act with the object of regulating or administering any activity for the benefit of the general public;

   Specified Income means as may be notified by Central Government.

   Such entity is required to file the return of income under section 139(4C).

5. **Section 10(47)** has been introduced to exempt any income of an infrastructure debt fund, set up in accordance with the guidelines to be notified by the Central Government.

   Section 115A has also been amended to provide that any interest received by a non-resident or foreign company from such notified infrastructure debt fund shall be taxable @ 5% on the gross amount of such interest income.

   Further, a new **section 194LB** has been introduced to provide that tax shall be deducted @ 5% by such notified infrastructure debt fund on any interest paid by it to a non-resident/ foreign company.

6. Under **section 35(2AA)** it is provided that any sum paid to National Laboratory or a University or an Indian Institute of Technology or ***specified persons as approved by the prescribed authority*** with a specific direction that the said sum shall be used for scientific research undertaken under a approved programme, then there shall be allowed a **deduction of a sum equal to 175% of the sum so paid. This limit has been raised to 200%.**

7. Under the existing provisions of section 35AD of the Income-tax Act, investment-linked tax incentive is provided by way of allowing 100% deduction in respect of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business".

   Section 35AD has been amended to include the following new businesses as "specified business" in respect of which deduction under section 35AD can be claimed.

   a. 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

   b. production of fertilizer in India in a new plant or in a newly installed capacity in an existing plant for production of fertilizer.

8. Section 80-IA has been amended to bring the following sunset clauses:

Business	Sunset Date
1. Refining of Mineral Oil	- Refining to start by 31^{st} March, 2012
2. Production of Mineral Oil	- No deduction in respect of Blocks Licensed after 31.3.2011
3. Production Natural Gas	- No sunset

9. Exemption from applicability of section 115JB i.e. MAT provisions has been removed for developer of SEZ or a unit located in SEZ. Therefore, developer of SEZ and the unit located in SEZ is liable to MAT.

   Further, Section 115-O has been amended to discontinue the availability of exemption from dividend distribution tax in the case of SEZ Developers under the Income-tax Act as well as the SEZ Act for dividends declared, distributed or paid on or after 1st June, 2011.

10. Prior to amendment, the contribution made by an employer towards a recognised provident fund, an approved superannuation fund or an approved gratuity fund was allowable as a deduction from business income under section 36, subject to certain limits. However, the contribution made by an employer to the NPS is not allowed as a deduction.

    Section 36 has been amended to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee to the extent it does not exceed ten per cent of the salary of the employee in the previous year, shall be allowed as deduction in computing the income under the head "Profits and gains of business or profession".

11. Section 92C of the Income-tax Act provides the procedure for computation of the Arm's Length Price (ALP). The section provides the methods of computing the ALP and mandates that the most appropriate method should be chosen to compute ALP. It is also provided that if more than one price is determined by the chosen method, the ALP shall be taken to be the arithmetical mean of such prices. The second proviso to section 92C(2) provides that if the variation between the actual price of the transaction and the ALP, as determined above, does not exceed 5% of the actual price, then, no adjustment will be made and the actual price shall be treated as the ALP.

    A fixed margin of 5% across all segments of business activity and range of international transactions has out-lived its utility. Therefore, section 92C has been amended to provide that instead of a variation of 5% the allowable variation will be such percentage as may be notified by Central Government in this behalf.

12. Section 92CA of the Act provides that the Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction, which has been referred to the TPO by the Assessing Officer.

    Section 92CA has been amended so as to specifically provide that the jurisdiction of the Transfer Pricing Officer shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently, in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

13. Section 92CA(7) provides that for the purpose of determining the ALP, the TPO can exercise powers available to an Assessing Officer under section 131(1) and section 133(6). These are powers of summoning or calling for details for the purpose of inquiry or investigation into the matter.

In order to enable the TPO to conduct on-the-spot enquiry and verification, section 92CA(7) has been amended so as to enable the TPO to also exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.

14. In case of a company who is required to furnish report under section 92E, due date of filing of Return shall be **30th November of the Assessment Year.**

15. In order to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India, anti-avoidance measures has been added. Section 94A in the Act to specifically deal with transactions undertaken with persons located in such country or area.

    The section provides -

    (1) an enabling power to the Central Government to notify any country or territory outside India, having regard to the lack of effective exchange of information by it with India, as a notified jurisdictional area;

    (2) that if an assessee enters into a transaction, where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises and the transaction shall be deemed to be an international transaction and accordingly, transfer pricing regulations shall apply to such transactions;

    (3) that no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization, in the prescribed form, authorizing the Board or any other income-tax authority acting on its behalf, to seek relevant information from the said financial institution;

    (4) that no deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any provision of the Act unless the assessee maintains such other documents and furnishes the information as may be prescribed;

    (5) that if any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee.

    (6) that any payment made to a person located in the notified jurisdictional area shall be liable to deduction of tax at the higher of the rates specified in the relevant provision of the Act or rate or rates in force or a rate of 30%.

16. Prior to amendment, dividend received from foreign companies is taxable in the hands of the resident shareholder at his applicable marginal rate of tax. Therefore, in case of Indian companies which receive foreign dividend, such dividend is taxable @ 30% plus applicable surcharge and cess.

    Section 115BBD has been added to provide that where total income of an Indian company for the previous year relevant to the assessment year 2012-13 includes any income by way of dividends received from a foreign subsidiary company, then such dividends shall be taxable @ 15% (plus applicable surcharge and cess) on the gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act.

17. Section 115A which provides for tax on interest in case of Non-residents & Foreign Companies has been amended to provide the benefit of investors in Infrastructure debt fund referred to in section 10(47). Now, interest income referred in section 115A will be taxed as under:

Where the total income of a foreign company OR A NON-RESIDENT includes any income by way of –	**Applicable Rate of Tax**
(i) *interest received from Government or an Indian concern on moneys borrowed by the Government/ Indian concern* **in foreign currency***, other than referred to in (ii) below.*	**20% of such interest**
(ii) **Interest received from an infrastructure debt fund referred to in section 10(47)**	**5% of such interest**

18. A new Chapter has been added to levy Alternate Minimum Tax (AMT) on LLPs.
    - LLPs are liable to pay AMT if the tax payable under the normal provision of Income tax is lesser than AMT.
    - Rate of tax shall be 18.5% (plus education cess) of Adjusted Total Income.
    - Adjusted Total Income shall be computed as under:

Total income as computed under the normal provisions of the Income-tax Act	xxx
Add: Deductions under Chapter VI-A (Heading C – Deduction in respect of certain incomes)	xxx
Add: Deduction under Section 10AA (Deduction in respect of profits of SEZ units)	xxx
Adjusted Total Income	**xxx**

    - AMT paid in excess of the regular income-tax computed under the normal provisions will be available as credit against future tax liability.
    - The AMT credit will be allowed to be carried forward and set-off for a period of ten years succeeding the year in which such credit becomes available.
    - Credit is allowed in the year in which regular tax is more than AMT.
    - The credit allowed to be set-off will be restricted to the difference between the regular income-tax computed under the normal provisions and the AMT.
    - LLPs will be required to obtain a report from a chartered accountant certifying the computation of the adjusted total income and AMT and required to furnish on or before the due date of filing of return.

19. Section 115R has been amended to provide that the specified company or a Mutual Fund shall pay income tax on income distributed as under:

    (i) If mutual fund is money market mutual fund or liquid fund:
    - ⇨ 25% of income distributed to Individual & HUF
    - ⇨ 30% of income distributed to others.

(ii) Other cases
- ⇨ 12.5% of income distributed to Individual & HUF
- ⇨ 30% of income distributed to others.

Note: Above rates are to be increased by 5% surcharge and 3% education cess.

20. Section 131(1) of the Income-tax Act, certain income-tax authorities have been conferred the same powers as are available to a Civil Court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions.

    A new sub-section (2) has been inserted in section 131. The new sub-section provides that for the purpose of making an enquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority, not below the rank of Assistant Commissioner of Income-tax, as notified by the Board in this behalf, to exercise the powers currently conferred on income-tax authorities referred to in section 131(1). The authority so notified by the Board shall be able to exercise the powers under section 131(1) notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

    Section 131(3) has been amended so as to empower the aforesaid authority, as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

21. Section 133 provides that Income-tax authorities can seek information from any person including a banking company for conducting an enquiry or for any proceeding which is pending before it. Section 133 has also been amended to provide that **for the purposes of an agreement referred to in section 90 or section 90A, an income-tax authority notified under section 131(2) may exercise all the powers conferred under this section, notwithstanding that no proceedings are pending before it or any other income-tax authority.**

22. Section 153 of the Income-tax Act provides for the time limits for completion of assessments and re-assessments. Section 153B contains time limits for completing assessments or re-assessments in case of search & seizure.

    Amendments have been made in section 153 and 153B so as to exclude the time taken in obtaining information from the tax authorities in jurisdictions situated outside India, under an agreement referred to in section 90 or section 90A, from the statutory time limit prescribed for completion of assessment or reassessment.

    The following period shall be excluded for the purpose of section 153 and 153B:
    The period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of six months, whichever is less."

23. Section 245C provides that the application to ITSC can be made if:
    (i) Additional amount of income tax on the income disclosed in application exceeds ₹ 50 lakhs for 6 Previous Years preceding the Previous Year in which search is conducted and for the Previous Year in which search is conducted.
    (ii) If the person on whom search is conducted is a person related to the person referred to in (i) above and person referred in (i) above has filed settlement application ➔ Additional amount to income tax on the income disclosed in application exceeds ₹ 10 lakhs for 6 Previous Years preceding the Previous Year in which search is conducted and for the Previous Year in which search is conducted. Related person means as defined in section 40A(2). (Finance Act, 2011)
    (iii) Other case i.e. 143(3)/ 144, the additional amount of income tax should exceed ₹ 10 lakh.

24. The Settlement Commission may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4).

25. Section 282B which dealt with Document Identification Number (DIN) has been deleted.

26. Section 285 has been inserted to facilitate collection of information of liaison offices of non-residents including foreign companies. Every person, being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall, in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within 60 days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.