

TAXATION

Updates applicable for December 2011 Exams

Direct Taxes (Income Tax & Wealth Tax):

A. Amendments made by the Finance Act, 2010

(1) Tax Rates:

(a) In the case of every **individual or Hindu undivided family or association of persons or body of individuals or every artificial juridical person**:

Upto Rs. 1,60,000	<i>Nil</i>
Rs.1,60,000 to Rs. 5,00,000	10 % of the amount in excess of Rs.1,60,000
Rs. 5,00,000 to Rs. 8,00,000	Rs. 34,000 <i>plus</i> 20 per cent of the amount in excess of Rs.5,00,000
Rs. 8,00,000 and above	Rs. 94,000 <i>plus</i> 30 % of the amount in excess of Rs. 8,00,000.

(b) In the case of every individual, **being a woman resident in India**, and **below the age of sixty-five years** at any time during the previous year,

Upto Rs. 1,90,000	<i>Nil</i>
Rs.1,90,000 to Rs. 5,00,000	10 % of the amount in excess of Rs.1,90,000
Rs. 5,00,000 to Rs. 8,00,000	Rs. 31,000 <i>plus</i> 20 per cent of the amount in excess of Rs.5,00,000
Rs. 8,00,000 and above	Rs. 91,000 <i>plus</i> 30 % of the amount in excess of Rs. 8,00,000.

(c) In the case of **every individual**, being **a resident in India**, who is of the age of **sixty-five years or more** at any time during the previous year:-

Upto Rs. 2,40,000	<i>Nil</i>
Rs.2,40,000 to Rs. 5,00,000	10 % of the amount in excess of Rs.2,40,000
Rs. 5,00,000 to Rs. 8,00,000	Rs.26,000 <i>plus</i> 20 per cent of the amount in excess of Rs.5,00,000
Rs. 8,00,000 and above	Rs.86,000 <i>plus</i> 30 % of the amount in excess of Rs.8,00,000.

(d) In the case of every **co-operative society**:

(1) where the total income does not exceed Rs. 10,000.	10 % of the total income;
(2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000.	Rs. 1,000 <i>plus</i> 20% of the amount by which the total income exceeds Rs. 10,000;
(3) where the total income exceeds Rs. 20,000	Rs. 3,000 <i>plus</i> 30% of the amount by which the total income exceeds Rs. 20,000.

(e) **In the case of every firm**: On the whole of the total income @30%

(f) **In the case of every local authority**: On the whole of the total income @30%

(g) **In the case of a company**:

(i) In the case of a **domestic company** @30% of the total income.

(ii) In the case of a company **other than a domestic company**:

(i) on so much of the total income as consists of,:	
(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or	
(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved 50 %; by the Central Government	50%
(ii) on the balance, if any, of the total income	40 %

Surcharge on income-tax

(i) in the case of every **domestic company** having a total income exceeding one crore rupees @7.5% of such income-tax;

(ii) in the case of every company other than a **domestic company** having a total income exceeding one crore rupees @ 2.5%

2. Definition of “charitable purpose”

With retrospective effect from 1st April 2009, section 2(15) has been amended to provide that “the advancement of any other object of general public utility” shall continue to be a “charitable purpose” if the total receipts from 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 **do not exceed Rs.10 lakhs** in the previous year.

3. Definition of Income u/s 2(24):

Clause (xv) of section 2(24) relating to definition of income has been amended to include value of property referred to in clause (viia) of section 56(2) in the meaning of Income.

4. Income deemed to accrue or arise in India to a non-resident

With retrospective effect from 1st June 1976, the existing Explanation to section 9 has been substituted with a new Explanation to specifically state that the income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) of section 9 and shall be included in his total income, whether or not,:

- (a) the non-resident has a residence or place of business or business connection in India; or
- (b) the non-resident has rendered services in India.

5. Cancellation of registration obtained under section 12A

Currently section 12AA(3) provides that if the activities of the trust or institution are found to be non-genuine or its activities are not in accordance with the objects for which such trust or institution was established, the registration granted under section 12AA can be cancelled by the commissioner after providing an opportunity of being heard.

With effect from 1st June 2010, section 12AA has been amended so as to provide that the Commissioner can also cancel the registration obtained under section 12A.

6. Weighted deduction for scientific research and development

Under the existing provisions of section 35(2AB), a company is engaged in the business of manufacturing or producing any article or thing not being an article or thing specified in the Eleventh Schedule is allowed weighted deduction of 150% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research and development facility. In order to further incentivize the corporate sector to invest in in-house research, the weighted deduction available u/s 35(2AB) has been increased from **150 per cent to 200 per cent**.

7. Weighted deduction for contribution to approved scientific research association, or contribution to IIT, National Laboratory, etc.:

The existing provisions of section 35(1)(ii) of the Income-tax Act provide for a weighted deduction from the business income to the extent of 125 per cent of any sum paid to an approved scientific research association that has the object of undertaking scientific research or to an approved university, college or other institution to be used for scientific research. Further, under section 35(2AA) of the Act, weighted deduction to the extent of 125 per cent is also allowed for any sum paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme.

In order to encourage more contributions to such approved entities for the purposes of scientific research, this weighted deduction has been increased **from 125 per cent to 175 per cent**.

7. Weighted deduction on payments made to associations engaged in research in social science or statistical research and exemption in respect of the income of such associations

The associations which are engaged in undertaking research in social science or statistical research are not currently covered by the provisions of section 35(1)(iii). Such research associations are also not entitled to exemption in respect of their income.

With effect from 1st April 2011, section 35(1)(iii) has been amended so as to include an approved research association which has as its object undertaking research in social science or statistical research. Section 10(21) has also been amended so as to also provide exemption to such associations in respect of their income. This exemption will be subject to the same conditions under which an approved research association undertaking scientific research is entitled to exemption in respect of its income. An amendment to section 80GGA has also been made to include allowability of deductions for donations made to such associations.

8. Investment linked deduction for specified business

Benefits of profit linked deduction under Chapter VI-A of the Income-tax Act are currently available to specified categories of hotels in Uttarakhand and Himachal Pradesh; National Capital Territory and adjacent districts; 22 districts having World Heritage Sites and North-Eastern States, which start functioning before specified dates mentioned in the Act.

In view of the high employment potential of this sector, investment linked incentive has also been extended to the **hotel sector, irrespective of location**, under section 35AD of the Income-tax Act. The investment-linked tax incentive allows 100 per cent deduction in respect of the whole 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” during the previous year in which such expenditure is incurred.

9. Disallowance of expenditure on account of non-compliance with TDS provisions

A. The existing provisions of section 40(a)(ia) of Income-tax Act provide for the disallowance of expenditure like interest, commission, brokerage, professional fees, etc. if tax on such expenditure was not deducted, or after deduction was not paid during the previous year. However, in case the deduction of tax is made **during the last month of the previous year**, no disallowance is made if the tax is deposited on or before the due date of filing of return.

Section 40(a)(ia) has been amended to provide that no disallowance will be made if after deduction of tax **during the previous year**, the same has been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

This amendment is retrospectively effective from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

B. Under the existing provisions of section 201(1A) of the Act, a person is liable to pay simple interest at one per cent for every month or part of month in case of failure to deduct tax or payment of tax after deduction.

With a view to discourage the practice of delaying the deposit of tax after deduction, the rate of interest for non-payment of tax after deduction raised from the present **one per cent to one and one-half per cent for every month or part of month**. This amendment is effective from 1st July, 2010.

10. Limit of turnover or gross receipts for the purpose of audit of accounts and for presumptive taxation

A. In order to reduce compliance burden of small businesses and professionals, the threshold limit for the purpose of audit has been raised from **forty lakh rupees to sixty lakh rupees** in the case of persons carrying on business and from **ten lakh rupees to fifteen lakh rupees** in the case of persons carrying on profession.

B. In view of the above amendment, the maximum penalty, leviable under section 271B for failure to get accounts audited under section 44AB or to furnish a report of such audit, has been raised from **1 lakh rupees to 1.5 lakh rupees**.

C. For the purpose of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts has been increased from **forty lakh rupees to sixty lakh rupees**.

These amendments are effective from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

11. Income of a non-resident providing services or facilities in connection with prospecting for, or extraction or production of, mineral oil

In order to remove doubts and clarify the distinct scheme of taxation of income by way of fee for technical services, the proviso to section 44BB has been amended so as to exclude the applicability of section 44BB to the income which is covered under section 44DA. Similarly, section 44DA has been

amended to provide that provisions of section 44BB shall not apply to the income covered under section 44DA.

These amendments are effective from 1st April 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

12. Conversion of a private company or an unlisted public company into a limited liability partnership (LLP)

The Finance (No. 2) Act, 2009 provided for the taxation of LLPs in the Income-tax Act on the same lines as applicable to partnership firms. Section 56 and section 57 of the Limited Liability Partnership Act, 2008 allow conversion of a private company or an unlisted public company (hereafter referred as company) into an LLP. Under the existing provisions of Income-tax Act, conversion of a company into an LLP has definite tax implications. Transfer of assets on conversion attracts levy of capital gains tax. Similarly, carry forward of losses and of unabsorbed depreciation is not available to the successor LLP.

In relation LLP's, with effect from 1st April 2011, Finance Act, 2010 provides for the following:

a) The transfer of assets on conversion of a company into an LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008 shall not be regarded as a transfer for the purposes of capital gains tax under section 45, subject to certain conditions. These conditions are as follows:

- (i) the total sales, turnover or gross receipts in business of the company do not **exceed sixty lakh rupees** in any of the three preceding previous years;
- (ii) the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
- (iii) no consideration other than share in profit and capital contribution in the LLP arises to partners;
- (iv) the erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for a period of 5 years from the date of conversion;
- (v) all assets and liabilities of the company become the assets and liabilities of the LLP; and
- (vi) no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

(b) Carry forward and set-off of business loss and unabsorbed depreciation allowed to the successor LLP which fulfills the above mentioned conditions.

(c) If the conditions stipulated above are not complied with, the benefit availed by the company shall be deemed to be the profits and gains of the successor LLP chargeable to tax for the previous year in which the requirements are not complied with.

(d) The aggregate depreciation allowable to the Predecessor Company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place.

(e) The actual cost of the block of assets in the case of the successor LLP shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion.

(f) The cost of acquisition of the capital asset for the successor LLP shall be deemed to be the cost for which the predecessor company acquired it.

(g) Credit in respect of tax paid by a company under section 115JB is allowed only to such company under section 115JAA. Therefore, the tax credit under section 115JAA shall not be allowed to the successor LLP.

These amendments are effective from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

13. Taxation of certain transactions without consideration or for inadequate consideration

1. Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

- A. These are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision.
- B. In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, section 56 has been amended to include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested).
- C. Section 2(18) provides the definition of a company in which the public are substantially interested.

Consequential amendments:

- (i) Section 2(24), to include the value of such shares in the definition of income;
- (ii) Section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56 (2).

These amendments are effective from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

2. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, the definition of property has been amended so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

3. In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. Therefore, clause (vii) of section 56(2) has been amended so as to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

These amendments are retrospectively effective from 1st October, 2009 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

4. **With effect from 1st June 2010**, the definition of 'property' under section 56 has been amended so as to include transactions in respect of 'bullion'.

5. **With effect from 1st July 2010**, Section 142A (1) has been amended to allow the Assessing Officer to make a reference to the Valuation Officer for an estimate of the value of property for the purposes of section 56(2).

14. Deduction in respect of long-term infrastructure bonds

In tune with the policy thrust of promoting investment in the infrastructure sector, with effect from 1st April 2011, a new section 80CCF has been inserted in the Income-tax Act to provide that subscription during the financial year 2010-11 made to long-term infrastructure bonds (as may be notified by the Central Government), to the extent of Rs. 20,000, shall be allowed as deduction in computing the income of an **individual or a Hindu undivided family**. This deduction will be over and above the existing overall limit of tax deduction on savings of upto Rs.1 lakh under section 80C, 80CCC and 80CCD of the Act.

15. Deduction in respect of contribution to the Central Government Health Scheme

The Central Government Health Scheme (CGHS) is a medical facility available to serving and retired Government servants. This facility is similar to the facilities available through health insurance policies. Therefore, with effect from 1st April 2011, any contribution made to CGHS shall be allowed under the provisions of section 80D. The deduction will be limited to the current aggregate as mentioned in the section.

16. Deduction for developing and building housing projects

Under the existing provisions of section 80-IB(10), 100 per cent deduction is available in respect of profits derived by an undertaking from developing and building housing projects approved by a local authority before 31.3.2008. This benefit is available subject to, *inter alia*, the following conditions:

- (a) the project has to be completed within 4 years from the end of the financial year in which the project is approved by the local authority.
- (b) the built-up area of the shops and other commercial establishments included in the housing project should not exceed 5 per cent of the total built-up area of the housing project or 2,000 sq.ft. Whichever is less.

To allow for extraordinary conditions due to the global recession and the resultant slowdown in the housing sector, it is provided to increase the period allowed for completion of a housing project in order to qualify for availing the tax benefit under the section, from the existing 4 years to 5 years from the end of the financial year in which the housing project is approved by the local authority. This extension will be available for housing projects approved on or after 1.4. 2005.

The built-up area of the shops and other commercial establishments included in the housing project shall be three per cent of the aggregate built-up area of the housing project or 5000 sq. ft., whichever is higher. This benefit will be available to projects approved on or after the 1.4.2005, which are pending for completion, in respect of their income relating to assessment year 2010-11 and subsequent years. These amendments are retrospectively effective from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

17. Deduction of profits of a hotel or a convention centre in the National Capital Territory

Section 80-ID of the Income-tax Act provides for 100 per cent deduction for five years, of profits derived by an undertaking from the business of a two-star, three-star or four-star category hotel or from the business of building, owning and operating a convention centre located in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, provided such hotel has started functioning or such convention centre is constructed during the period 1.4.2007 to 31.3.2010.

To provide some more time for these facilities to be set up in light of the Commonwealth Games in October, 2010, w.e.f. 1st April 2010 clauses (i) and (ii) of section 80-ID has been amended to extend the date by which the hotel has to start functioning or the convention centre has to be constructed, from the present 31st March, 2010 to 31st July, 2010.

18. Minimum Alternate Tax under Section 115JB

W.e.f 1st April 2011, sub-section (1) of section 115JB amended so as to increase the MAT rate **to eighteen per cent from the existing fifteen per cent.**

19. Centralised Processing of Returns

Under the existing provisions of section 143(1B), the Central Government may, for the purposes of giving effect to the scheme of centralised processing of returns under section 143(1A), issue a notification relating to such processing of returns. Such a notification can be issued up to 31st March, 2010.

A Centralised Processing Centre has been set up where returns are being processed in batches. However, some more functionality in the processing of returns may need to be added to make it a complete end-to-end process.

Therefore, Finance Act, 2010 w.r.e.f 1st April 2010 has extended the time limit for issue of such notification under section 143 (1B) from 31st March, 2010 to 31st March 2011.

20. Rationalization of provisions relating to Tax Deduction at Source (TDS)

Under the scheme of deduction of tax at source as provided in the Income-tax Act, every person responsible for payment of any specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within the specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limits.

In order to adjust for inflation and also to reduce the compliance burden of deductors and taxpayers, the threshold limit has been raised for payments mentioned in sections 194B, 194BB, 194C, 194D, 194H, 194-I and 194J as under:

<i>Sl.</i>	<i>Section</i>	<i>Nature of payment</i>	<i>Existing threshold (Rupees)</i>	<i>Proposed threshold (Rupees)</i>
1	194B	Winnings from lottery or crossword puzzle	5,000	10,000
2	194BB	Winnings from horse race	2,500	5,000
3	194C	Payment to contractors	20,000 (for a single transaction) 50,000 (for aggregate of transactions during the financial year)	30,000 (for a single transaction) 75,000 (for aggregate of transactions during the financial year)
4	194D	Insurance commission	5,000	20,000
5	194H	Commission or Brokerage	2,500	5,000
6	194-I	Rent	1,20,000	1,80,000
7	194J	Fees for professional or technical services	20,000	30,000

These amendments are effective from 1st July, 2010.

21. Certificate of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)

The existing provisions of section 203(3) of the Income-tax Act dispense with the requirement of furnishing of TDS certificates by the deductor to the deductee on or after 1st April, 2010. Similarly, under section 206C(5) of the Act, a collector of tax at source will also not be required to issue tax collection certificate to the person from whom tax has been collected on or after 1st April, 2010.

Considering the fact that the TDS/TCS certificate constitutes an important document for the deductee/collectee, it is provided that w.r.e.f 1st April 2011 the deductor/collector will continue to furnish TDS/TCS certificates to the deductee/collectee even after 1st April, 2010.

22. Settlement Commission

The conditions for filing of an application before the Settlement Commission and the time for disposal of an application by the Settlement Commission has been modified. The changes made are as under:-

A. Definition of the term “case”:

Under the existing provisions of section 245A(b), the term “case”, in relation to which an application can be made is defined as any proceeding for assessment, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application is made to the Settlement Commission. However, it excludes, among others, proceedings for assessment or reassessment resulting from a search or as a result of requisition of books of account or other documents or any assets, initiated under the Act.

The proceedings for assessment or reassessment resulting from search or as a result of requisition of books of account or other documents or any assets, will come within the definition of a “case” which can be admitted by the Settlement Commission.

Similarly, consequential amendments have also been made in section 22A of the Wealth-tax Act. These amendments are effective from 1st June, 2010.

B. Threshold limit for filing of application before the Settlement Commission:

Under the existing provisions of section 245C of the Income-tax Act, an application can be filed before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds **three lakh rupees**.

The proviso to section 245C, has been amended so as to provide that an application can be filed before the Settlement Commission, in cases where proceedings for assessment or reassessment have been initiated as a result of search or as a result of requisition of books of account or other documents or any assets, if the additional amount of income-tax payable on the income disclosed in the application **exceeds fifty lakh rupees**. It is further amended that, in other cases, an application can be made before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds **ten lakh rupees**. These amendments are effective from 1st June, 2010.

C. Time Limit for passing an order:

Under the existing provisions of section 245D (4A) of the Income-tax Act, the Settlement Commission shall pass an order **within twelve months** from the end of the month in which the application was made.

w.e.f 1st June 2010 clause (ii) of sub-section (4A) has been amended so as to provide that the Settlement Commission, shall, in respect of an application filed on or after 1st June, 2007 but before 1st June, 2010, pass an order within the said period of **twelve months**.

Further, a new clause (iii) in sub-section (4A) has been inserted so as to provide that the Settlement Commission shall, in respect of an application made on or after 1st June, 2010, pass an order **within eighteen months** from the end of the month in which the application is made.

Consequential amendments on similar lines have been made in section 22D of the Wealth-tax Act.

23. Power of the High Court to condone delay in filing of appeals

A. The existing provisions of section 260A(2) provide that an appeal against the order of Income-tax Appellate Tribunal can be filed before the High Court within a period of one hundred and twenty days from the date of the receipt of the order by the assessee or the Commissioner. Sub-section (7) of section 260A of the Income-tax Act provides that the provisions of Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply in the case of an appeal filed under this section before the High Court.

The Delhi High Court, while interpreting provisions of section 260A, has held that the High Court has the power to condone delay in filing of an appeal. However, Allahabad, Bombay, Kolkata, Guwahati and Chattisgarh High Courts have held otherwise.

With retrospective effect from 1st October, 1998 sub-section (2A) has been inserted in section 260A of the Income-tax Act to specifically provide that the High Court may admit an appeal after the expiry of the period of **one hundred and twenty days**, if it is satisfied that there was sufficient cause for not filing the appeal within such period.

Consequential amendments on similar lines have been made in section 27A of the Wealth-tax Act.

B. Under section 256 of the Income-tax Act, the Income-tax Appellate Tribunal could refer a case to the High Court. In case where the Income-tax Appellate Tribunal refused to refer a case to the High Court, the assessee or the Commissioner were allowed to file an appeal before the High Court against such refusal of the Tribunal within a period of **six months from the date on which he was served with an order of refusal**.

With retrospective effect from 1st June, 1981 sub-section (2A) has been inserted in section 256 so as to empower the High Court to admit an application **after the expiry of the period of six months**, if it is satisfied that there was sufficient cause for not filing the same within such period.

Consequential amendments on similar lines have been made in section 27 of the Wealth-tax Act.

24. Document Identification Number

Section 282B (Allotment of Document Identification Number) is a new section inserted by the Finance (No. 2) Act, 2009 in the Income-tax Act with effect from 1st October, 2010.

Under the provisions of this section, an income-tax authority is required to allot a computer generated Document Identification Number before issue of every notice, order, letter or any correspondence to any other income-tax authority or assessee or any other person and such number shall be quoted thereon. It also provides that every document, letter, correspondence received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.

In order to cover the entire gamut of services mentioned in section 282B on a pan-India basis, it would be essential to have the requisite infrastructure and facilities in place. With effect from 1st October 2010 the provisions of section 282B have been amended so as to provide that Document Identification Number will be required to be issued on or after 1st July, 2011.

(B) Amendments made by issue of Notifications:

1. Exemption limit of Gratuity:

The exemption limit of gratuity has been increased from Rs.3,50,000 to Rs.10,00,000 vide Notification No. 43/2010 dated 11.06.10 for employees who retire/die on or after 24.05.2010. The notification has been reproduced below:

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
Notification No. 43/2010
New Delhi, the 11th June, 2010
(Income Tax)

S.O. 1414(E).- In exercise of the powers conferred by sub-clause (iii) of clause (10) of Section 10 of the Income Tax Act, 1961(43 of 1961), and in supersession of Ministry of Finance, Department of revenue, notification No. S.O. 287 dated the 20th January, 1999 the Central Government having regard to the maximum amount of any gratuity payable to employees, hereby specifies ten lakh rupees as the limit for the purpose of the said sub-clause in relation to the employees who retire or become incapacitated prior to such retirement or die on or after the 24th day of May, 2010 or whose employment is terminated on or after the said date.

[Notification No.43/2010/F.No.200/33/2009-ITA-I]
PADAM SINGH, Under Secy.

2. Interest credited to recognised Employee's Provident Fund:

Vide notification no. 69/2010, with effect from 1st September 2010, any interest credited to Recognised Provident Fund in excess of 8.5% per annum is taxable in the hands of Employee's earlier the limit was 9.5% p.a.

**MINISTRY OF FINANCE
(Department of Revenue)
(Central Board of Direct Taxes)**

NOTIFICATION

New Delhi, the 26th August, 2010

[INCOME-TAX]

S.O. 2091(E).—In exercise of the powers conferred by clause (b) of Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number S.O. 484(E), dated the 30th May, 2001, the Central Government hereby fixes, with effect from the 1st day of September, 2010, 8.5 per cent, as the rate referred to in the said clause.

[Notification No. 69/2010/F. No. 142/14/2010-

SO (TPL)]

VIVEK ANAND OJHA, Under Secy.

INDIRECT TAXES

Service Tax

Amendments made by the Finance Act, 2011

1. Furnishing of Return (Section 70):

In section 70, in sub-section (1), maximum late fee for delayed furnishing of return, has been increased from “two thousand rupees”, to “twenty thousand rupees”;

2. Recovery of service tax not levied or paid or short levied or short paid or erroneously refunded (Section 73):

In section 73,

(i) Sub - section (1A) shall be omitted;

(ii) The provisos to sub-section (2) shall be omitted;

(iii) After sub-section (4), the following sub-section shall be inserted, namely:

‘(4A) Notwithstanding anything contained in sub-sections (3) and (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent. of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent. of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded:

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).

Explanation.—For the purposes of this sub-section and section 78, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.’

(3) Interest on amount collected in excess (Section 73B):

In section 73B, after the first proviso, the following proviso shall be inserted -

“Provided further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent per annum.”;

(4) Interest on delayed payment of service tax (Section 75):

In section 75, the following proviso shall be inserted -

“Provided that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent per annum.”;

(5) Penalty for failure to pay service tax (Section 76):

In section 76,

(i) for the words “two hundred rupees”, the words “one hundred rupees” shall be substituted;

(ii) For the words “two per cent.”, the words “one per cent.” shall be substituted;

(iii) In the proviso, after the words “shall not exceed”, the words “fifty per cent. of” shall be inserted;

Illustration

X, an assessee, fails to pay service tax of ten lakh rupees payable by the 5th March. X pays the amount on the 15th March. The default has continued for ten days.

The penalty payable by X is computed as follows:

(i) 1% of the amount of default for 10 days

$$(1/100) \times 10,00,000 \times (10/31) = \text{Rs.} 3,225.80$$

(ii) Penalty calculated @ Rs.100 per day for 10 days = Rs.1,000

Penalty liable to be paid is Rs. 3226.00.

(6) Penalty for contravention of Rules and Provisions of Act for which no penalty is specified elsewhere (section 77):

In section 77, for the words “five thousand rupees” wherever they occur, the words “ten thousand rupees” shall be substituted;

(7) Penalty for suppressing, etc., of value of taxable services Section 78:

For section 78, the following section shall be substituted

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:

Provided that where true and complete details of the transactions are available in the specified

records, penalty shall be reduced to fifty per cent. of the service tax so not levied or paid or short- levied or short-paid or erroneously refunded:

Provided further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent. of such service tax:

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that in case of a service provider whose value of taxable services does not exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.

(2) Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account:

Provided that in case where the service tax to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days or ninety days, as the case may be, of communication of the order by which such increase in service tax takes effect:

Provided further that if the penalty is payable under this section, the provisions of section 76 shall not apply.

Explanation.—For the removal of doubts, it is hereby declared that any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person.”;

(9) After section 87, the following sections shall be inserted;

(a) Section 88: Liability under Act to be first charge-

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person as the case may be.

(b) Section 89: Offences and penalties

(1) Whoever commits any of the following offences, namely,

(a) provides any taxable service chargeable to service tax under sub-section (1) of section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, without an invoice issued in accordance with the provisions of this Chapter or the rules made thereunder; or

(b) avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

shall be punishable,—

(i) in the case of an offence where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term, which may extend to one year.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) The fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) The fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for

the same act which constitutes the offence;

(iii) The fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) The age of the accused.

(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.”;

**(10) After section 96I, the following sections shall be inserted;
Section 96J: Special exemption from service tax in certain cases:**

(1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President.”

Amendments made by the Notification:

POINT OF TAXATION (POT) RULES, 2011

1. Point of taxation means the point in time when a service shall be deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax. As per Rule 3, point of taxation shall be (a) the time when the invoice for service provided or to be provided is issued.(b) in case where payment is received before the issue of invoice then the time when such payment is received and where advance is received by the service provider the time of receipt of such advance.

Rule 4A of the Service Tax Rules 1994, provides that every person providing taxable service shall issue invoice within 14 days of completion of service or receipt of any payment towards the value of such taxable service whichever is earlier. Further proviso to Rule 3 of POT Rules provides that where the invoice is not issued within 14 days of completion of service than the point of taxation shall the date of completion of such service.

Examples:

S. No.	Date of Completion of service	Date of Invoice	Date on which payment is received	Point of taxation	Remarks
1	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice is issued within 14 days and before payment
2	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 14 days and payment received after completion of service
3	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice is issued within 14 days and payment received before issue of invoice
4	April 10, 2011	April 26, 2011	April 5, 2011 (Part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for remaining	Invoice not issued within 14 days. Part payment before completion and remaining later.

2. Rate of service tax

W.e.f. 1.4.2011, Rule 5B of Service Tax Rules 1994, provides that rate of tax in case of services provided or to be provided shall be the rate prevailing at the time of services deemed to have been provided.

3. Continuous supply of service

“Continuous supply of service” means any service provided or to be provided continuously for a period exceeding three months. Further, Central Government may notify particular services to be considered as 'Continuous Supply of Services.

The following services have been notified as continuous supply of service irrespective of period for which they are provided or to be provided vide Notification No. 28/2011.

- (a) Telecommunication service
- (b) Commercial or industrial construction
- (c) Construction of residential complex
- (d) Internet Telecommunication service
- (e) Works contract services

In case of continuous supply of service, the point of taxation shall be the date of completion of the events as specified in the contract or time when invoice for the service provided or to be provided is issued or the date on which payment is received, whichever is earlier. Where any advance is received by the service provider the point of taxation shall be date of receipt of each such advance.

4. Point of Taxation in case of specified services or persons:

The Point of Taxation in respect of;

- (a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005
- (b) the persons required to pay tax as recipients of services
- (c) Practicing Chartered Accountants, Practicing Cost Accountant, Practicing Company Secretaries, Advocates, Architects, Interior Decorators, Scientist and Technocrats shall be the date on which payment is received or made.

In case of associated enterprises, where the person providing the service is located outside India, the Point of Taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment, whichever is earlier.

However in case of Export of services payment is not received within the period specified by RBI then point of taxation shall be determined as per Rule 3,4,5,6 or 8 as applicable.

Where payment not made within six months of date of invoice of service provided in case where the service tax is paid by the recipient the point of taxation shall be determined as per Rule 3,4,5,6 or 8 as applicable.

5. Applicability and Transitional Provisions [Rule 9]

These rules shall not apply (a) where the provision of service is completed or (b) where invoices are issued prior to 1.4.2011.

Where the provision of services completed on or before 30-06-2011 or invoice issued before 30-06-2011 then the point of taxation shall be issue of invoice or date of receipt of payment at the option of tax payer.

CENVAT Credit Rules, 2004

1. Definition of Capital Goods: The definition of Capital Goods has been amended from 01-04-2011 to include goods used outside the factory for generation of electricity for captive use within the factory.

2. Definition of exempted goods: With effect from the 1st day of March, 2011, the definition of exempted goods has been amended to include goods for which exemption under Notification No. 1/2011-CE, dated the 1st March, 2011 is availed.

3. Definition of exempted services: W.e.f. 01-03-2011, the definition of exempted services has been amended to include taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken. Exempted services would also include trading.

4. Definition of Input: The definition of input has been substituted,

“Input” means–

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes-

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation – For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;”;

5. Definition of Input Services: The definition of “Input Services” has been substituted:

(I) “Input service” means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;”;

6. Definition of “Manufacturer” or “Producer”: The definition of manufacturer or producer has been substituted

Manufacturer or producer;

(i) in relation to articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub rule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002.

7. Removal of goods as such – Credit reversal not required for warranty replacement: Rule 3(5) has been amended from 01-04-2011 whereby Cenvat credit reversal is not required in case of inputs removed as such for the purposes of providing free warranty for final products.

8. Cenvat credit reversal on input service when payment returned: A proviso has been added from 01-04-2011 to provide for payment of an amount equivalent to credit availed if payment made towards input service is returned.

9. Common input services used in taxable and exempted services: the amount payable in respect of services when common input services are used in taxable and exempted services has been reduced from 6% to 5%. New sub rule (6A) is inserted in Rule 6 from 01-03-2011 to provide for provision of services without payment of service tax to SEZ units or developer without credit reversal.

10. Cenvat credit on input service – Date of taking credit: Sub-rule (7) of Rule 4 of the Cenvat Credit Rules, 2004 has been substituted (w.e.f 01-04-2011) to provide for amendments as consequence to coming into force of Point of Taxation Rules, 2011 and also to state that if payment for input service is not made within 3 months of date of invoice etc., Cenvat credit has to be reversed.

11. Input services – Supplementary invoices eligible: Rule 9 of the Rules has been amended (w.e.f. 1-4-2011) to provide for availment of Cenvat credit on the basis of supplementary invoices issued by output service provider, in non-fraud cases.

Central Excise Act, 1944

1. Valuation of Excise goods with respect of Retail Sale Price method (section 4A):

In section 4A, in sub-section (1), for the words “Standards of Weights and Measures Act, 1976”, the words “Legal Metrology Act, 2009” shall be substituted.

2. Substitution of new section 11A for section 11A – Recovery of duties not levied or not paid or short- levied or short- paid or erroneously refunded.

(1) Where any duty of excise has not been levied or paid or has been short-levied or short- paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,—

(a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,—

(i) his own ascertainment of such duty; or

(ii) duty ascertained by the Central Excise Officer,

the amount of duty along with interest payable thereon under section 11AA.

(2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year 10 shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—

(a) fraud; or

(b) collusion; or

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

(5) Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or short-levied or short-paid or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent. of such duty.

(6) Any person chargeable with duty under sub-section (5), may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under section 11AA and penalty equal to one per cent. of such duty per month to be calculated from the

month following the month in which such duty was payable, but not exceeding a maximum of twenty-five per cent. of the duty, and inform the Central Excise Officer of such payment in writing.

(7) The Central Excise Officer, on receipt of information under sub-section (6) shall

(i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid;

(ii) proceed for recovery of such amount if found to be short-paid in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information.

(8) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), the period during which there was any stay by an order of the court or tribunal in respect of payment of such duty shall be excluded.

(9) Where any appellate authority or tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1).

(10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)—

(a) within six months from the date of notice in respect of cases falling under sub-section (1);

(b) within one year from the date of notice in respect of cases falling under sub-section (4) or sub-section (5).

(12) Where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.

(13) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.

(14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation.— For the purposes of this section and section 11AC,—

(a) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) “relevant date” means,—

(i) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder;

(ii) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed on due date, the date on which such return has been filed;

(iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;

(iv) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;

(c) “specified records” means records including computerised records maintained by the person chargeable with the duty in accordance with any law for the time being in force.’.

3. Substitution of new section 11AA for sections 11AA and 11AB – Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section

(2), whether such payment is made voluntarily or after determination of the amount of duty under section 11A.

(2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid in terms of section 11A after the due date by the person liable to pay duty and such interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.”.

4. Substitution of new section 11AC for section 11AC – Penalty for short-levy or non-levy of duty in certain cases:

(1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows:—

(a) where any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

(b) where details of any transaction available in the specified records, reveal that any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent. of the duty so determined;

(c) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (b) is paid within thirty days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined;

(d) where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11A, then, the amount of penalties and interest payable shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay such amount of penalty or interest so modified.

Explanation.—For the removal of doubts, it is hereby declared that in a case where a notice has been served under sub-section (4) of section 11A and subsequent to issue of such notice, the Central Excise Officer is of the opinion that the transactions in respect of which notice was issued have been recorded in specified records and the case falls under sub-section (5), penalty equal to fifty per cent of the duty shall be leviable.

(2) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.”.

5. Insertion of new section 11E – Liability under Act to be first charge:

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.”.

6. Insertion of new section 12F – Power of search and seizure

(1) Where the Joint Commissioner of Central Excise or Additional Commissioner of Central Excise has

reasons to believe that any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any Central Excise Officer to search and seize or may himself search and seize such documents or books or things.

(2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure, shall, so far as may be, apply to search and seizure under this section as they apply to search and seizure under that Code.”.

7. Insertion of new section 35R – Appeal not to be filed in certain cases

(1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.”.

Customs Act, 1962

1. Amendment of section 2(2) – Definition of Assessment:

“Assessment” includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

2. Substitution of new section 17 for section 17 – Assessment of duty.

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.”.

3. Amendment of section 18 – Provisional Assessment of duty:

In section 18, for sub-section (1), the following sub-section shall be substituted, namely:

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,—

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section

17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed.

(b) in sub-section (2), in the opening portion, for the words “in accordance with the provisions of this Act”, the words “by the proper officer” shall be substituted.

4. Amendment of section 19 – Determination of duty where goods consist of articles liable to different rates of duty:

In section 19 of the Customs Act, in the proviso, in clause (b), after the words “proper officer”, the words “or the evidence is available” shall be inserted. .

5. Amendment of section 27 – Claim for refund of duty:

In section 27 of the Customs Act, for sub-section (1), the following sub-sections shall be substituted, namely:

(1) Any person claiming refund of any duty or interest,—

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

Explanation.— For the purposes of this sub-section, “the date of payment of duty or interest” in relation to a person, other than the importer, shall be construed as “the date of purchase of goods” by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other

evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:—

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof.'.

6. Substitution of new section 28 for section 28 – Recovery of duties not levied or short-levied or erroneously refunded:

For section 28 of the Customs Act, the following section shall be substituted, namely:

(1) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the

date of receipt of information under sub-section (2).

(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion—

- (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or
- (ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),

- (a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice in respect of cases falling under sub-section (4).

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation. For the purposes of this section, “relevant date” means,—

- (a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.’.

7. Substitution of new section 28AA for sections 28AA and 28AB – Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.”.

8. Amendment of section 46 – Entry of goods on importation

In section 46 of the Customs Act,

(a) in sub-section (1),

- (i) after the words “by presenting”, the word “electronically” shall be inserted;
- (ii) for the words “Provided that”, the following shall be substituted,

“Provided that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

(b) in sub-section (4), the words “at the foot thereof” shall be omitted.

9. Amendment of section 50 – Entry of goods for exportation

In section 50 of the Customs Act,

(a) in sub-section (1),

(i) After the words “thereof by presenting”, the word “electronically” shall be inserted;

(ii) The following proviso shall be inserted, namely:—

“Provided that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.”;

(b) in sub-section (2), the words “at the foot thereof” shall be omitted.

10. Insertion of new section 131BA – Appeal not to be filed in certain cases

(1) The Board may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Commissioner of Customs under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Commissioner of Customs has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Commissioner of Customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Commissioner of Customs pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Commissioner of Customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Appellate Tribunal or court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the Commissioner of Customs in pursuance of orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Board on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.”.

11. Insertion of new section 142A – Liability under Act to be first charge

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the

property of the assessee or the person, as the case may be.”.

12. Amendment of section 150 – Procedure for sale of goods and application of sale proceeds:

In section 150 of the Customs Act, in sub-section (2), the following proviso shall be inserted, namely:

“Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.”

13. Amendment of section 151A – Instructions to Officers of Customs:

In section 151A of the Customs Act, after the words “levy of duty thereon”, the words “or for the implementation of any other provisions of this Act or of any other law for the time being in force, in so far as they relate to any prohibition, restriction or procedure for import or export of goods” shall be inserted.

14. Amendment of section 157 – General power to make regulation:

In section 157 of the Customs Act, in sub-section (2), after clause (c), the following clause shall be inserted:

(d) the manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter, as the case may be.
