



*Direct Tax Code
Companies Bill
Goods & Service Tax
International Financial
Reporting Standards*

An Overview of
THE FINANCE BILL 2011

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Unless otherwise specifically mentioned, the amendments proposed are to be effective from A. Y. 2012-13 and are therefore applicable with respect to income arising on or after 1st April, 2011. Specific mention is made at the relevant places, when the effective date of a proposed amendment is other than 1st April, 2011. Reference to the existing provisions means the provisions of the Act immediately prior to the amendments proposed in the Finance Bill, 2011 ("the Bill").

Any reference to the sections, unless otherwise stated, is to the sections of the Income Tax Act, 1961 ("the Act")

A. RATES OF TAX

In respect of rates of tax, the following changes have been proposed in the Bill:

- Increase in basic exemption limits by ₹ 20,000/- in case of Resident & Non-Resident Assessee (other than Women).
- The age limit of Senior Citizen has been reduced to 60 years from 65 years.
- Increase in basic exemption limit of Senior Citizen by ₹ 10,000.
- Introduction of new category of assessee of age above 80 years as Very Senior Citizen. They will be entitled higher basic exemption limit of ₹ 5,00,000/-.
- There is no change in basic tax rate for Firms, Domestic Companies, Companies other than Domestic Companies, Co-operative Societies.
- Rate of Surcharge in case of Domestic Companies has been reduced to 5.00% from 7.50%. In case of Companies other than Domestic Companies rate of surcharge has been reduced to 2.00% from existing 2.50%.
- Rate of Minimum Alternate Tax in case of Companies is proposed to be increased from 18% (effective 19.9305% with Surcharge & Cess) to 18.50% (effective 20.008% with Surcharge & Cess).
- Minimum Alternate Tax is now also applicable to LLPs.
- There is no change in applicability of Secondary & Higher Educational Cess (3%) to all classes of assessees.
- Special concessional rate of 15% tax introduced in respect of dividend received by Indian holding Company from a foreign subsidiary, effectively reducing the burden on the dividend received from foreign company to one half.
- There is no change in tax rates of Tax Deducted at Sources and Tax Collected at Sources except rate of TDS on interest from Infrastructure Funds payable to Non-Residents.
- There is no change in rates of Dividend Distribution Tax on Companies. Dividend Distribution Tax will now be payable also by SEZ Developers and units set up in SEZ.

The proposed income tax rates (including Surcharge, Education Cess and Secondary and Higher Secondary Cess) for the A. Y. 2012-13 have been given below in the **Table 1** for ready reference. These income tax rates are applicable on any income earned during the period from 1st April, 2011 to 31st March, 2012.

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The rates of Dividend Distribution Tax, Security Transactions Tax and Wealth Tax are given in **Table 2**

The rates of TDS and TCS are contained in **Table 3**.

TABLE - 1 (Income Tax Rates)

Particulars	Threshold limit for Surcharge ₹	Tax Rates	
		Without Surcharge	With Surcharge
Individual, HUF, AOP & BOI	N.A.		
<u>Resident Male Assessee & All Non-Resident Assessee</u>			
Upto ₹ 1,80,000		Nil	N.A.
₹ 1,80,001 to ₹ 5,00,000		10.30%	N.A.
₹ 5,00,001 to ₹ 8,00,000		20.60%	N.A.
₹ 8,00,001 onwards		30.90%	N.A.
<u>Resident Female Assessee below 60 years of age</u>			
Upto ₹ 1,90,000		Nil	N.A.
₹ 1,90,001 to ₹ 5,00,000		10.30%	N.A.
₹ 5,00,001 to ₹ 8,00,000		20.60%	N.A.
₹ 8,00,001 onwards		30.90%	N.A.
<u>Resident Senior Citizen Assessee aged from 60 years to 79 years</u>			
Upto ₹ 2,50,000		Nil	N.A.
₹ 2,50,001 to ₹ 5,00,000		10.30%	N.A.
₹ 5,00,001 to ₹ 8,00,000		20.60%	N.A.
₹ 8,00,001 onwards		30.90%	N.A.
<u>Resident Senior Citizen Assessee aged 80 years & above</u>			
Upto ₹ 5,00,000		Nil	N.A.
₹ 5,00,001 to ₹ 8,00,000		20.60%	N.A.
₹ 8,00,001 onwards		30.90%	N.A.
Partnership Firm	N.A.	30.900%	N.A.
Limited Liability Partnership	N.A.	30.900%	N.A.
Domestic Company (Other than Foreign Company)	1,00,00,000	30.900%	32.445%
Company other than Domestic Company (Foreign Company)	1,00,00,000	41.200%	42.024%
Local Authority	N.A.	30.900%	N.A.

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Particulars	Threshold limit for Surcharge ₹	Tax Rates	
		Without Surcharge	With Surcharge
Co-operative Society			
Upto ₹ 10,000		10.300%	N.A.
₹ 10,001 to ₹ 20,000		20.600%	N.A.
₹ 20,001 onwards		30.900%	N.A.
Minimum Alternate Tax			
Limited Liability Partnership	N.A.	18.500%	18.500%
Domestic Company	1,00,00,000	19.055%	20.008%
Company other than Domestic Company	1,00,00,000	19.055%	19.436%
STCG on Listed Securities			
Individual, HUF, AOP & BOI	N.A.	15.450%	N.A.
Partnership Firm	N.A.	15.450%	N.A.
Domestic Company	1,00,00,000	15.450%	16.223%
Company other than Domestic Company	1,00,00,000	15.450%	15.759%
STCG on assets other than listed securities			
Individual, HUF, AOP & BOI	N.A.	As per slab	As per Slab
Partnership Firm	N.A.	30.900%	N.A.
Domestic Company	1,00,00,000	30.900%	32.445%
Company other than Domestic Company	1,00,00,000	41.200%	42.024%
LTCG on assets other than Listed Securities			
Individual, HUF, AOP & BOI	N.A.	20.600%	N.A.
Partnership Firm	N.A.	20.600%	N.A.
Domestic Company	1,00,00,000	20.600%	21.630%
Company other than Domestic Company	1,00,00,000	20.600%	21.012%
Rates of tax on Specific Income			
Interest from Infrastructure debt fund received by Non-Resident individual (section 115A)	N.A.	5.150%	N.A.
Interest from Infrastructure debt fund received by Non-Resident other than individual (section 115A)	1,00,00,000	5.150%	5.253%
Dividend Received by Indian Company from Foreign Subsidiary (section 115BBD)	1,00,00,000	15.450%	16.223%

TABLE - 2 (Other Direct Tax Rates)

Particulars	Tax Rates
Dividend / Income Distribution Tax	
By Domestic Company (section 115-O)	16.223%
By Money Market Mutual Fund or Liquid Fund (section 115-R)	
For income distributed to Individual / HUF	27.038%
For income distributed to others	32.445%
By Other Mutual Funds (section 115-R)	
For income distributed to Individual / HUF	13.518%
For income distributed to others	32.445%
Securities Transaction Tax	
Delivery based purchased of an Equity Share in Company or a Unit of an Equity Oriented Fund	0.125%
Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund	0.125%
Non-Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund	0.025%
Derivatives (Future & Options)	0.017%
Sale of option in securities where option is exercised	0.125%
Repurchase of Units of an Equity Oriented Fund	0.250%

Particulars	Threshold limit ₹	Tax Rates
Wealth Tax (Individual, HUF & Company)	30,00,000	1.000%

TABLE - 3 (TDS/TCS Rates)

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI/ AOP	Firm / LLP	Co-operative Society/Local Authority	Company
192	Salary	As per Slab	Normal Rate (Incl. cess)	N.A.	N.A.	N.A.
193	Interest on Securities					
	(1) Interest on Debentures or Securities (Listed)	2,500*	10.00	10.00	10.00	10.00
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10.00	10.00	10.00	10.00
	(3) Any Other Interest on Securities (Unlisted)	0	10.00	10.00	10.00	10.00
194	Dividend other than dividend covered by section 115-O	2,500*	10.00	10.00	10.00	10.00
194A	Interest other than Interest on Securities (cases other than below) Where the payer is	5,000	10.00	10.00	10.00	10.00
	(1) Banking Company	10,000	10.00	10.00	10.00	10.00
	(2) Co-operative Society engaged in banking business	10,000	10.00	10.00	10.00	10.00
	(3) Post Office under a deposit scheme framed by Central Government	10,000	10.00	10.00	10.00	10.00
194B	Winning from Lotteries	10,000	30.00	30.00	30.00	30.00
194BB	Winnings from Horse Races	5,000	30.00	30.00	30.00	30.00

(* in case of resident individual only)

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Section	Nature of Payment	Threshold Limit in ₹	Individual/ HUF/ BOI/ AOP	Firm/ LLP	Co-operative Society/Local Authority	Company
194C	Payments to Contractors					
	(1) In case of Contractors /Sub-Contractor / Advertising	30,000 ¹	1.00	2.00	2.00	2.00
	(2) Contractor /Sub-Contractor in Transport Business	30,000 ¹	NIL ²	NIL ²	NIL ²	NIL ²
194D	Insurance Commission	20,000	10.00	10.00	10.00	10.00
194E	Non-Resident Sportsman /Sports Association	0	10.00	10.00	10.00	NA
194EE	Deposits under NSS to Resident /Non-Resident	2,500	20.00	20.00	20.00	NA
194F	Repurchase of units of Mutual Fund /UTI from Resident /Non-Resident	0	20.00	20.00	20.00	NA
194G	Commission on Sale of lottery tickets to Resident /Non-Resident	1,000	10.00	10.00	10.00	10.00
194H	Commission or Brokerage to Resident	5,000	10.00	10.00	10.00	10.00
194I	Rent to Resident					
	(a) Rent for Machinery /plant / equipment	1,80,000	2.00	2.00	2.00	2.00
	(b) Rent for other than in (a)	1,80,000	10.00	10.00	10.00	10.00

¹ This limit is for individual transaction. However, if aggregate payment to contractors during the year exceed ₹75,000/- then tax will be required to be deducted even where individual transaction is less than the threshold of ₹ 30,000

² Nil rates will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 20%. (transporter means persons engaged in plying, hiring, and leasing of Goods Carriages)

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Section	Nature of Payment	Threshold Limit in ₹	Individual/ HUF/ BOI/ AOP	Firm/ LLP	Co-operative Society/Local Authority	Company
194J	Fees for Professional / Technical Services to Resident	30,000	10.00	10.00	10.00	10.00
194LA	Compensation to Resident on acquisition of immovable property	1,00,000	10.00	10.00	10.00	10.00
194LB	Interest paid to Non-Resident by Notified Infrastructure Debt (w.e.f. 1 st June, 2011)	0	5.00	5.00	5.00	5.00
195	Payment of Other Sums to an NRI (Other than specified in section 194LB)	Rate Specified under Part II of First Schedule of The Bill subject to DTAA				
196B	Income from units (including long term Capital Gain on transfer of such units) to an offshore fund	0	10.00	10.00	10.00	10.00
196C	Income from foreign currency bonds or GDR of Indian Company	0	10.00	10.00	10.00	10.00
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20.00	20.00	20.00	20.00

Note:

- a) In order to strengthen the PAN Mechanism, it is proposed to make amendments in the Income Tax Act to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher rate of the following rates: (a) prescribed in the Act; (b) at the rate in force i.e. the rate mentioned in the Finance Act; or (c) of 20%
- b) On applicability of the proposed section 94A, the tax is required to be deducted at source at the higher rate of 30%
- c) All rates of TDS for Non-Resident Assessee shall be increased by applicable Surcharge and Educational Cess.

TCS RATE FOR THE ASSESSMENT YEAR 2011-12 (in %)
(TCS rates with effect from 1st April 2011)

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI/ AOP	Firm / LLP	Co-operative Society/Local Authority	Company
206CA	Alcoholic liquor for human consumption and Indian made foreign liquor	0	1.00	1.00	1.00	1.00
206CB/CC/CD	Timber obtained by any mode and any other forest produce	0	2.50	2.50	2.50	2.50
206CE	Scrap	0	1.00	1.00	1.00	1.00
206CF/CG/CH	Parking lot /Toll plaza / Mining and Quarrying	0	2.00	2.00	2.00	2.00
206CI	Tendu leaves	0	5.00	5.00	5.00	5.00

B. PERSONAL TAXATION

B1. Limit of deduction in respect of specified investment and contributions U/s. 80CCD

Section 80CCD grants a deduction to a person for contribution made by him towards the New Pension Scheme [NPS]. This deduction is subject to a ceiling of 10% of the salary [in case of a person who is employed] or 10% of the gross total income [in case of person other than an employee]. In addition to the above, an employee of the Central Government or any other employee was also entitled to the deduction of contribution made by the employer towards such pension plan, provided, such contribution did not exceed 10% of the salary of the employee.

Section 80CCE provided an overall ceiling for various deductions U/s. 80C, 80CCC and 80CCD of ₹ 1.00 lac and therefore any such contribution, expense, payment or investment made in excess of ₹ 1.00 lac was not eligible for deduction. For computing this overall ceiling, the contribution made by the employee as well as contribution made by the employer both were included.

An amendment is proposed to remove the monetary limit of ₹ 1.00 lac on deduction to the employee for contribution made by the employer towards NPS [subject to the limit of 10% of the salary]. It may be noted that the contribution made by the employer towards NPS will first have to be included in the income of the employee and then the deduction would be granted to the employee.

B2. Deduction for investment in Long Term Infrastructure Bonds U/s. 80CCF

Under the existing provision of Section 80CCF of the Income Tax Act, a sum of ₹ 20,000/- is allowed as deduction in computing the total income of an individual or Hindu Undivided Family if that sum is paid or deposited during the previous year relevant to the assessment year 2011-12 in Long Term Infrastructure Bonds as notified by the Central Government.

It is proposed to amend section 80CCF to allow deduction on account of investment in notified Long Term Infrastructure Bonds for the A. Y. 2012-13.

C. TRUSTS

C1. Definition of “Charitable Purpose”

Section 2(15) of the Act, defines “Charitable Purpose”. Under the said definition, a charitable institution which has the object of “advancement of any other object of general public utility” is denied exemption from the tax if it is engaged in the activity of trade, commerce or business or for rendering any service for a cess or fee. As a matter of marginal relief, the said denial of exemption was not attracted, so long as the aggregate of receipts from such activities was less than ₹ 10.00 lacs in the year under consideration.

To provide further relief to such NGOs, it is proposed in the Bill, that such benefit of exemption will not be denied to the institutions having object of general public utility, even where they are engaged in the activity of trade, commerce or business or for rendering any service for a cess or fee, provided the aggregate value of receipt from such activities is less than ₹ 25.00 lacs in the year under consideration.

D. TAXATION OF NON-RESIDENTS

D1. Special Rate on interest earned by Non-Resident

As per the current provision of section 115A the income from any kind of interest is taxable in the hands of non-resident (excluding companies) or foreign companies at the flat rate of 20% plus applicable surcharge and cess if any.

The Bill proposes to provide concessional rate of 5% in case the interest is received by such non-resident from notified infrastructure debt funds as notified under the proposed section 10(47). It is to be noted that such concessional benefit is available only to the non-resident assessee or to a foreign company.

As the interest from such notified infrastructure debt funds will be taxable in the hands of non-resident @ 5%, the Bill also proposes to insert section 194LB which provides that tax is required to be deducted @ 5% on such interest payment to non-resident. It is to be noted that the non-resident would be required to obtain PAN in India to claim reduced TDS rate of 5% in view of the existing provision of section 206AA.

This amendment is proposed with effect from 1st June, 2011.

D2. Compliance by Liaison Office of Non-Residents

A new section 285 is proposed to be introduced to deal with liaison office of non-residents. A permanent establishment of the foreign national is required to file return of income in India. However, there is no such provision dealing with liaison office. Section 285 proposes to monitor the functioning of the liaison office of a non – resident in India.

As provided in section 285, a liaison office of a non – resident is required to furnish a statement in prescribed form in respect of its activities in a financial year, within 60 (sixty) days from the end of the financial year to the assessing officer having jurisdiction over such liaison office.

This provision is proposed to come into effect from 1st June, 2011.

E. MINIMUM ALTERNATE TAX

E1. Minimum Alternate Tax enhancement

The Bill has proposed to increase tax rate of MAT from 18% to 18.5%. Accordingly the effective tax rate payable by a company having more than ₹ 1 Cr. of book profit shall be **20.008%**. The same is at par with the 20% rate of tax as proposed in the Direct Taxes Code Bill, 2010.

E2. Minimum Alternate Tax on SEZs

Under the existing provision of section 115JB the units in SEZ and the developer of SEZ are exempted from paying MAT. The said exemption is proposed to be withdrawn from the **Assessment Year 2012-13 (i.e. F.Y. 2011-12)**. In view thereof, SEZ and units under SEZ shall also be required to pay MAT U/s. 115JB on book profits with effect from 1st April, 2012.

E3. Alternate Minimum Tax (AMT) for Limited Liability Partnerships

The Bill proposes to introduce new provisions (sections 115JC to JF) in respect of alternate minimum tax to be imposed on the adjusted total income of Limited Liability Partnerships under proposed Chapter XII-BA. The thrust of the proposed amendment is to restrict the benefit of deductions available under Chapter VIA-C [Deduction in respect of certain incomes] or section 10AA [SEZ Units] to such LLPs. The gist of the AMT on LLPs is as under:

- LLPs shall be liable to pay AMT of 18.50% on adjusted total income where tax payable on total income computed under the regular provisions is lower than the AMT so computed.
- The adjusted total income means total income as computed under the Act as increased by:
 - deductions in respect of certain incomes claimed U/s. 80HH to 80RRB and
 - deduction claimed in respect of newly established units under SEZs as per section 10AA.
- LLPs shall be required to obtain report from an accountant and shall furnish the same with return of income.
- The AMT paid U/s. 115JC shall be allowed as credit as per section 115JD to the extent the AMT paid exceeds the regular tax payable. The credit shall be allowed to be carried forward for 10 Assessment Years and shall be allowed to be set-off where the regular tax is higher than the AMT and to the extent the regular tax exceeds the AMT.

F. DEDUCTIONS AND EXEMPTIONS

F1. Allowances / Perquisites from Union Public Service Commission

It is proposed to insert new clause (45) in section 10 of the Income Tax Act, to provide exemption from income tax of any allowance or perquisite, as may be notified by the Central Government, paid to the Chairman or a retired Chairman or any other member or retired member of the Union Public Service Commission (UPSC). The aim of such exemption is to place the members and retired members of the UPSC at par with the Election Commissioners and judges of the Supreme Court, who enjoy similar exemptions.

The above clause shall be inserted retrospectively with effect from 1st April, 2008.

F2. Income of notified Institution

The Bill proposes to introduce new clause (46) in section 10 of the Act to grant power to the Central Government to notify such institutions which are formed under an Act of Parliament or State Legislature or formed by Central or State Government for regulating or administering any activity for general public and upon such notification, the income of such institution would be exempted from tax to the extent specified in the notification. It is however provided that such institution shall not be notified if it is engaged in any communal activity.

An amendment is proposed in section 139 to provide that such funds will be required to file the return of income, if their income, without giving effect to this exemption, exceeds the maximum amount not chargeable to tax.

This change is proposed with effect from 1st June, 2011.

F3. Income of notified Infrastructure Debt Fund

It is proposed to insert new clause (47) in section 10 of the Income Tax Act to provide exemption in respect of any income of an Infrastructure Debt Fund set up in accordance with the guidelines as may be prescribed, which is notified by the Central Government in the Official Gazette. Corresponding amendment is made in the taxation of non-residents to tax their income from such funds, at concessional rate of 5% so as to encourage non-residents to make investment in such funds.

An amendment is proposed in section 139 to provide that such funds will be required to file the return of income, if their income, without giving effect to this exemption, exceeds the maximum amount not chargeable to tax.

This change is proposed with effect from 1st June, 2011.

F4. Weighted Deduction for Scientific Research

Under the existing provision of section 35(2AA) payment made to national laboratory, university, IIT or specified person for scientific research, weighted deduction @ 175% is allowed for the purpose of approved scientific research program.

There was an anomaly in the provision, in as much as, for in-house research for the approved scientific program, deduction @ 200% was available, whereas contribution for such program entitled an assessee to claim deduction @ 175% only. An amendment is proposed in the bill to remove such anomaly and to grant deduction to such contribution to a national laboratory, university, IIT or specified person for scientific research @ 200% of the payment made, provided such contribution is made for an approved program.

F5. Deduction in respect of expenditure on Specified Business

Section 35AD provides for investment linked deduction in respect of capital expenditure incurred on specified businesses. The Bill proposes to extend the benefit of such deduction to the:

- a. business of development and building of housing project under a Scheme framed by the Central Government or a State Government and notified in this behalf by the Board in accordance with the prescribed guidelines.
- b. business of production of fertilizer in India.

By the Finance Act, 2010, the benefit of deduction U/s. 35AD was also extended with effect from A. Y. 2011-12, to building and operating a hotel of two-star and above category or building and operating a hospital with at least one hundred beds for patients. The provisions required setting up of a "New" hotel or hospital. By proposed amendment the requirement of "New" Hotel or Hospital is dispensed with retrospective effect from A. Y. 2011-12 and thus, the existing eligible hotels and hospitals would also be able to avail of the benefit.

As per section 35AD an assessee is allowed 100% deduction in respect of capital expenditure incurred wholly and exclusively for the purpose of specified businesses. The deduction will be allowed for capital expenditure incurred even after commencement of business. However no deduction shall be allowed in respect of expenditure incurred on acquisition of land, goodwill or financial instrument.

F6. Deduction towards contribution to NPS U/s. 36(1)(iva)

Any sum paid by the employer by way of contribution towards New Pension Scheme [NPS], on account of an employee will be allowed as deduction, subject to a ceiling of 10% of the salary of the employee in the previous year. Since this amendment is brought with effect from A. Y. 2012-13, it can be contended by the department that for earlier years, the deduction of such contribution is not available to the employer. However, the better view would be that the deduction was always available to the employer, but with effect from A. Y. 2012-13, a ceiling of 10% of the salary of the employee is introduced for the deduction available to the employer.

A corresponding amendment is also made in section 80CCE for removing the ceiling on the deduction available to the employee U/s. 80CCD on account of contribution towards NPS.

F7. Extension of Time Limit for Power Sector

Currently under the existing provision of section 80IA(4)(iv) of the Act, the deduction in respect of profits or gains is available to an undertaking which :

- a) is set up for generation or generation and distribution of power and begins to generate power
- b) starts transmission or distribution by laying a network of new transmission or distribution lines
- c) undertakes substantial renovation and modernization of existing network of transmission or distribution of lines.

Under the existing provision the undertaking was required to be set up, start or undertake expansion, on or before 31st March, 2011. The sun-set clause is proposed to be extended by one more year and thus the requirement of set up, start or undertake expansion has been extended to 31st March, 2012.

F8. Exclusions for undertakings engaged in commercial production of mineral oil

As per the existing provision of section 80IB(9)(ii) of the Act, 100% deduction of the profits and gains is available *inter alia* to an undertaking, which has begun commercial production of mineral oil, in any part of India, on or after 1st April, 1997 for seven consecutive assessment years including the initial assessment year.

There is a continuing benefit available to such undertakings by virtue of this section since there is no termination date prescribed for the eligibility accruing to such undertakings. However, the Bill has limited the benefit available under this section by inserting a proviso to this section 80IB(9)(ii).

By virtue of this proviso, hereafter, the benefit of section 80IB(9)(ii) will not be applicable to blocks licensed under a contract awarded after 31st March, 2011 under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated the 10th February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

It may be pointed out that the deduction U/s. 80IB(9) continues in respect of the rest of eligible undertaking without the sun-set provisions and accordingly the benefit of deduction U/s. 80IB(9) will be available to the undertaking located in North East Region, an undertaking engaged in commercial production of natural gas in blocks licensed under NELP VIII or undertaking engaged in licensed under CBM-IV, provided they satisfy their other respective conditions.

G. TRANSFER PRICING AND CROSS BORDER TRANSACTIONS

G1. Computation of Arm's Length Price

Section 92C of the Act provides for the provisions relating to the computation of the arm's length price ("ALP") wherein the Act prescribes selection of the Most Appropriate Method ("MAM"), from the various prescribed methods, for computation and determination of the ALP. It also provides that where more than one price is determined by application of the MAM, the arm's length price shall be taken to be the arithmetic mean of such prices.

Further, the Act provides that where there is variation between the ALP and the price at which the international transaction is actually undertaken, and if the variation does not exceed 5% of the price at which the international transaction is actually undertaken, the transaction shall be considered to be at arm's length.

It has been argued and debated at length that it is inappropriate to have a static cushion of 5% margin across the industry segments and nature of the transactions. The margin should be with reference to the industry, transaction segment, etc. The Bill proposes to provide flexibility in fixing such cushion or band.

The Bill has therefore proposed to provide that instead of a fixed margin of 5%, power be instituted with the Central Government to notify such rates of margin for different transactions / industry segments, etc.

G2. Reference to Transfer Pricing Officer (TPO)

Section 92CA(1) of the Act provides that where during the course of an assessment, the Assessing Officer notices that an assessee has entered into an international transaction with its Associated Enterprise ("AE"), he shall, if he considers it necessary, refer the computation of ALP in relation to the **said international transaction** U/s. 92C to the TPO.

It was understood that the reference to the Transfer Pricing Officer is made for determining the ALP of a particular international transaction. The Transfer Pricing Officer was not empowered to determine the ALP of any other international transaction which came to his notice during the transfer pricing proceedings.

The Delhi Tribunal in the case of **Amadeus India Private Limited Vs. ACIT 2011-TII-22-ITAT-DEL-TP** based on the wordings used in section 92CA(1) held that "The role of the TPO begins after a reference is received from the Assessing Officer. In terms of section 92CA this role is limited to the determination of

arm's length price in relation to the international transaction(s) referred to him by the Assessing Officer. If during the course of proceedings before him it is found that there are certain other transactions which have not been referred to him by the Assessing Officer, he will have to take up the matter with the Assessing Officer so that a fresh reference is received with regard to such transactions. It may be noted that the reference to the TPO is transaction and enterprise specific."

In order to remove doubts, section 92CA(2A) is proposed to be inserted, to empower the TPO to exercise his powers to such other international transaction as may come to his notice while carrying out the TP Assessment, as if such newly noticed transaction is also referred by the AO.

This amendment is proposed to be inserted with effect from 1st June, 2011.

G3. Enhanced Powers of the Transfer Pricing Officer (TPO)

Vide section 92CA(7) the TPO has been empowered with the powers of Assessing Officer ("AO") as mentioned in section 131 and section 133(6) of the Act. Hence the TPO has the powers similar to that vested in a court under the Code of Civil Procedure, 1908 in respect of proceedings of transfer pricing and also the power to call for any information in respect of any international transactions to any person as specified under section 133(6).

Further the scope and powers of the TPO have been enhanced by amending the said section 92CA(7) to include the power to conduct survey under section 133A. Henceforward, the TPO now is not required to direct the concerned AO for conducting survey. The Transfer Pricing Officer can perform such powers of investigation and inquiry by himself.

This amendment is proposed to be effective from 1st June, 2011.

G4. Transactions with persons located in notified jurisdictional area

In order to discourage the transactions of Indian residents with persons in those countries with which India has not entered into an Agreement for Exchange of Information, Bill proposes to expand the tax anti-avoidance provisions under the Act by inserting a new section 94A under "Chapter-X : Avoidance of Tax".

The provisions of proposed section 94A have been summarized hereunder:

- The Central Government by a notification in Official Gazette may notify certain countries or territories with which India has not yet signed any Agreement for Exchange of Information.

- The transactions entered into by any assessee with a person located in the jurisdictions as notified above shall be treated as follows:
 - i. All the parties to the transaction shall be considered as Associated Enterprises within the meaning of section 92A of the Act.
 - ii. The transactions entered into between the assessee and the person located in such notified area shall be deemed to be considered as international transaction within the meaning of section 92B.
 - iii. The Indian Transfer Pricing Provisions as contained in section 92 to 92F shall apply mutatis mutandis to the above mentioned transactions. Such transaction will not be entitled to the variation band with the ALP
- Further, no deduction shall be available to the assessee in respect of the following expenditure:
 - i. Payment made to a financial institution located in the notified jurisdiction **unless** the assessee furnishes an authorization to the Board /concerned Income Tax Authority to seek the relevant information from the said financial institution.
 - ii. Any other expense or allowance (including depreciation) arising from such transaction **unless** the assessee maintains the documents or information as prescribed.
- Any amount received /credited from the person located in such notified area shall be considered as deemed income of the assessee in India if the assessee fails to explain the source of such amount in the hands of such person/beneficial owner of such amount or the explanation given by the assessee is not to the satisfaction of the Assessing Officer.
- Any amount payable to such person located in notified jurisdictional area on which tax is deductible, the rate of TDS is higher of the following:
 - i. Rate(s) in force
 - ii. Rate specified in the relevant provisions of the Act.
 - iii. 30%

These amendments are proposed to come into effect from 1st June, 2011.

G5. Power of discovery, production of evidences, calling for information

Under the existing provision of section 131(1) of the Act, income tax authorities have power of discovery and inspection, enforcing the personal attendance of person, examining such person on oath, compelling the production of books of accounts and other documents, impounding of such documents and issuing commissions. As per section 133 income tax authority may call for various information as specified therein.

The powers under these provisions can be exercised in respect of proceedings pending under the Act or for the purpose of the provisions of the Act. Presently, India has entered into several agreements with foreign countries and

territories and has plans to enter into more such agreements with major thrust on the sharing and exchange of information for avoidance of fiscal evasions. The present powers possibly do not extend to making investigation or collection of information by an AO for providing information to other countries/ territories under the exchange of information provisions.

The Bill has proposed to extend the above powers for making an inquiry or investigation in respect of any person or class of person in relation to a double taxation avoidance agreement entered into with any country U/s. 90 or with any specified association U/s. 90A of the Act. For the purpose of making such investigation it is not necessary that any proceedings under the Act are pending.

The proposed amendment will be effective from 1st June, 2011.

G6. Special rate of tax on dividend received from foreign subsidiary

A new provision has been proposed to be introduced U/s 115BBD for taxability of dividend received by Indian Company from its subsidiary situated outside India. The salient features of this proposed provision are:

- The provisions shall be applicable to Indian companies having subsidiary outside India. A foreign company will be treated as subsidiary if the Indian Company holds more than 50% of nominal value of equity share capital.
- The meaning of dividend for this section shall be same as defined under section 2(22). However the provisions of new section 115BBD **shall not be applicable to deemed dividend** as defined U/s 2(22)(e).
- The income from such dividend shall be taxed in the hands of Indian Companies at a special rate of 15%. This would be final tax in the hands of the recipient.
- No deduction or allowance will be available to the Indian holding company on the dividend so received. It is to be kept in mind that the credit for the tax withheld in the foreign jurisdiction is not denied.
- The provisions of this new section 115BBD shall be applicable only for **one year** i.e. for Assessment Year 2012-13 (Financial Year 2011-12).

H. TAX ON DISTRIBUTION OF PROFIT / DIVIDEND

H1. Tax on Distributed Profits

As per the existing provisions of section 115O the developers of SEZ are exempted from paying tax on distributed profits. The said exemption is proposed to be withdrawn from 1st June, 2011. Accordingly all developers of SEZs shall be required to pay tax at the rate of 15% (plus applicable Surcharge and Education Cess) on dividends declared (whether interim or otherwise) on or after 1st June, 2011.

H2. Income Distribution Tax to unit holders (Section 115R)

Presently any income distributed by money-market mutual fund/liquid fund to a person other than individual or HUF is subject to 25% income distribution tax and if the fund is other than money-market mutual fund/liquid fund the income distribution tax rate is 20%. The Bill proposes to increase such rate to 30% in case of distribution of income by money market mutual fund/liquid fund or any other debt fund to person other than individual/ HUF.

The proposed amendment will be effective from 1st June, 2011.

I. RETURNS AND ASSESSMENT

I1. Filing of Return of Income - Transfer Pricing Cases

Under the present provision of the Act every company is required to file its return of income U/s. 139(1) on or before 30th September of the assessment year. It is observed that corporate assessee face practical difficulties in accessing contemporary comparable data before 30th September in order to furnish report in respect of their international transactions. The Bill has therefore proposed to extend the time limit of filing of return of income by further two months for a company which is required to furnish report under section 92E of the Act. The amendment will be effective from 1st April, 2011. Accordingly for A. Y.2011-12 the due date of filing of return of income U/s. 139(1) for a company which is required to furnish report U/s. 92E will be 30th November, 2011.

I2. Filing of Return of Income - Salaried Employees

As per the provision of section 139(1) of the Act every person, if his total income during the previous year exceeds the maximum amount which is not chargeable to tax, is required to furnish his return of income. In order to reduce the compliance burden on small tax payers e.g. salaried employees whose tax has been deducted by the employer and there is no other source of income, it is proposed to insert section 139(1C) which empowers the Central Government to exempt any class(es) of person(s) from the requirement of filing a return of income having regard to such conditions as may be specified by the Central Government. This amendment will be effective from 1st June, 2011.

I3. Extension of time limit of passing assessment/reassessment order in certain case (Section 153)

Section 153 of the Income Tax Act provides for time limit for completion of assessment/reassessment. As per Explanation 1 to section 153 certain period specified therein are to be excluded while computing the limitation period. It is proposed to exclude the time taken for obtaining information from the tax authorities situated outside India under an agreement referred U/s. 90/90A of the Act. Accordingly, the period of limitation would automatically get extended by the time taken by the AO in obtaining information from foreign tax jurisdiction under a DTAA or Exchange of Information Agreement, subject to an overall ceiling of 6 months.

It is proposed that the period of six months or the period commencing from the date on which a reference for exchange of information is made by an authority

competent under an agreement U/s. 90/90A and ending with the date on which the information so requested by the Commissioner is received whichever is less shall be excluded for the purpose of computing the time limit specified U/s. 153 of the Act for passing of an assessment or reassessment order. Similar amendment is proposed to be made in section 153B providing time limit for search assessments.

I4. Document Identification Number

The Finance (No. 2) Act, 2009, provided that every income tax authority shall allot a new computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income tax authority or assessee or any other person and such number shall be quoted thereon. It was provided that in absence of the document identification number the notice, order, letter or correspondence shall be considered as invalid and shall be deemed to have been never issued / received. The date of implementation was 1st October, 2010 which was subsequently extended to 1st July, 2011 by the Finance Act, 2010.

The Finance Bill, 2011 has done away with the above requirement by omitting section 282B.

J. SETTLEMENT COMMISSION

J1. Settlement in Search Cases

Section 245C of the Act provides for an option to an assessee to avail of the settlement of cases by filing a settlement application before the settlement commission set up under the Act. There are monetary limits fixed for additional tax payable on the income disclosed in the settlement application. The present section provides that in search cases [of the person searched and cases where other persons in whose case the proceedings have been initiated U/s. 153C], a person can file an application only if the additional tax payable is exceeding ₹ 50.00 lacs.

In search cases, a number of persons connected with each other are involved simultaneously. For comprehensive settlement of cases, it is essential that all the persons who are involved are part of the proceedings before the Settlement Commission. However, the present limit of ₹ 50.00 lacs to be satisfied individually by each applicant was found to be difficult.

The proposed amendment provides for a two tier approach in search cases. It provides for a lead assessee where the requirement of additional tax continues to be ₹ 50.00 lacs of additional tax payable. It is further proposed that in cases who are related to the lead assessee [in the manner provided for in present section 40A(2)(b)], the eligibility to file the settlement application would arise with reduced threshold of only ₹ 10.00 lacs of additional tax. The condition of pending proceedings for such additional applicant continues.

This amendment would substantially facilitate the settlement of cases in search assessments.

The amendment is proposed to be effective from 1st June, 2011.

J2. Rectification of order passed by the Settlement Commission

A new sub-section (6B) is proposed to be inserted in section 245D. The proposed section is inserted specifically to allow the Settlement Commission to rectify any mistake which is apparent from record. The time limit for passing the order is six (6) months from the date of original order. Though, it was generally interpreted that the Settlement Commission has the power to rectify the mistake under the omnibus clause (1) of section 245F of the Act, the matter was debatable.

Accordingly, a specific provision is proposed giving power to the Settlement Commission to amend its own orders passed U/s. 245D(4) of the Act. For

satisfying requirement of principles of natural justice, it has been provided that no order which is prejudicial to the assessee shall be passed unless an opportunity of being heard is given to the assessee and the commissioner.

K. MISCELLANEOUS

K1. Recognized Provident Fund

The Fourth Schedule deals with Recognized Provident Funds (other than provident funds to which Provident Funds Act, 1925 applies). Rule 3 deals with the powers of the Chief Commissioner according recognition to any Provident Fund.

The proviso to Rule 3 states that the Chief Commissioner may withdraw the recognition granted under the Income Tax Act, 1961 to the funds recognized on or before 31st March, 2006 if such fund does not satisfy, on or before 31st December, 2010, the conditions set out in the said clause and other conditions which the Board may, by rules specify, in this behalf.

The time limit for satisfying the conditions stated in Rule 4 has been extended from 31st December, 2010 to 31st March, 2012.

L. SERVICE TAX

L1. Legislative Amendment

Section 73 of the Act provides for interest and penalty on short payment. The amendment seeks to remove the hardship faced by all assesses who agree to make payment during the course of audit under the service tax provisions. By this amendment now the assessee who agrees to make the payment of the tax due, will have to bear interest for the amount in default. However, the penalty will be limited to 1% of the tax per month in default. The maximum penalty is 25% of the tax amount. Where the assessee provides taxable services of less than ₹ 60 lacs in a financial year this penalty will go down by 3%.

Consequent upon this the proviso in sub-section 2 of this section have been removed which were protecting assesses who made payment during the course of proceedings of full service tax with interest from any further consequences.

L2. Amendments in rules

Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007 are being amended through the Works Contract (Composition Scheme for Payment of Service Tax) Amendment Rules, 2011. The Works Contracts rules are applicable to the service under sub-clause (zzzza) of sub-section (105) of section 65. This clause describes the services which can be brought under composition. The services under this clause are:

- a) Erection, commissioning or installation of plant and machinery, equipment, etc.
- b) Construction of new building, structure, pipeline, for commerce or industry
- c) Construction of new residential complex
- d) Completion, finishing, repair, alteration, renovation, for b) or c) above
- e) Turnkey EPC projects

This shall come into force on the date of their publication in the official Gazette.

Rule (2) prohibits Cenvat credit on inputs where the tax payer opts for the composition scheme.

Rule (2A) is sought to be inserted to provide that only 40% Cenvat credit be made available for the service under the clauses (zzd), (zzq) and (zzzh) of clause (105) of section 65.

- Sub-clause (zzd) relates to service provided in relation to erection, installation and commissioning to an installation and commissioning agency.

- Sub-clause (zzq) relates to service provided to any person in relation to commercial and industrial construction
- Sub-Clause (zzzh) relates to service provided to any person in relation to construction of commercial complex.

L3. Point of Taxation Rules, 2011 (Accrual based taxation)

This shall come into force on 1st April, 2011. The objective of these rules is to define the date of applicability of the service tax. Continuous and other services are defined and the point of taxation of each is different. Six different situations are envisaged which all have been a bone of contention and litigation till date.

- In general the point of taxation would be invoice or payment whichever is earlier.
- If during the provision of service an invoice is raised and the payment is received then the service to that extent will be deemed to have been provided and therefore that amount will be subject to service tax.
- Advance by whatever name will be taxed on receipt.
- Services taxable under 66A (reverse charge on import of service) will be taxed on date of invoice or payment whichever is earlier.
- Where there is change in rate of tax but service is provided before the change in rate:
 - Where invoice and the payment is received after the change of rate, the point of taxation will be invoice or payment whichever is earlier.
 - Where the invoice is issued before the change in rate but payment is received after the change in rate the point of taxation will be the date of invoice.
 - Where the payment is received before the change in rate but invoice is issued after change in rate then the point of taxation is the date of receipt of payment.
- Where there is change in rate of tax but service is provided after the change in rate:
 - Where payment is received after the change in rate but invoice is issued before the change in rate the date of payment will be the point of taxation.
 - Where invoice and payment are before the change in rate the point of taxation will be date of receipt of payment.
 - Where the invoice has been raised after the change in rate but the payment has been received before the change in rate of tax, the point of taxation will be the date of invoice.
- Where new services are introduced which are not continuous in nature, no tax shall be payable where the invoice and payment are before the date on which service becomes taxable. No tax shall be payable if the payment is received before the service becomes taxable and the invoice is issued within the limit of section 4A of the Service Tax Rules, 1994.

- Where the supply of service is continuous and where there is a contract which specifies the date on which the payment becomes due, then that part which becomes due on the specified date will be the point of taxation. If however, before such due date the person providing service issues an invoice or receives payment then point of taxation will be date of invoice or receipt of payment whichever is earlier.
- In case of associated enterprises the point of taxation will date of receipt of payment or where the invoice is issued as per rule 4A of the Service Tax Rules, 1994 the date of debit or credit in the accounts of person liable to pay service tax, whichever is earlier.
- Payments pertaining to the copyrights, trademarks, patent, designs, etc. the determination of whole of the amount of consideration is not possible for the provision of the service at the time of providing service. In such cases the date of receipt of payment by the provider or date of issue of invoice for the service whichever is earlier will be the point of taxation.
- Invoices issued or payment received before the rules become applicable will not be covered under these rules.

L4. Exemption to SEZ developer and unit in SEZ

The provisions of service tax never provided any explicit exemption to the SEZ units/developer. It used to flow from SEZ Act where the development commissioner was authorized to prescribe these.

In the present budget, with effect from 1st March, 2011, by notification number 17/2011 dated 1st March, 2011, the service tax on all the services specified in sub-section (105) of section 65 is exempted in case of a unit in SEZ and a SEZ developer. Thus, all services received by a unit/developer in SEZ will be exempt from service tax. This exemption is subject to following conditions as prescribed in the notification:

- Exemption is by way of refund of the service tax paid on the specified services received for the authorized operations in a SEZ.
- The proviso to the first condition allows the unit which is consuming the whole of the service within the SEZ to not pay service tax *ab initio* instead of SEZ unit/ developer claiming exemption by way of refund.
- For the service to be eligible under the non-payment route, the services listed in the sub-rule (i) of the Export of Service Rules, 2005 should be in relation to the immovable property in SEZ.
- For the service to be eligible under the non-payment route the services listed in sub-rule (ii) of the Export of Services Rules, 2005 should be wholly performed within SEZ.
- For all other services provided, the exemption is tied to the condition that the unit or developer has no operation other than authorized operation in SEZ.

- The unit/ developer will have to obtain a list of taxable services as are required for the authorized operation. This list will have to be approved by the approval committee of SEZ.
- The process requires filing Form A-1 for declaring that the unit has no business other than the authorized operation in SEZ.
- Units having business in DTA will get exemption on proportionate basis as per the formula in the notification.
- No CENVAT credit is allowed to the unit under this notification.

L5. Introduction of Service Tax Amendment Rules, 2011

Service Tax Amendment Rules, 2011 have substituted the Service Tax Rules, 1994. The major revisions are mentioned hereunder:

- Under Rule 4A, the taxable event for a taxable service has been preponed to provision of service instead of erstwhile completion of service.
- A new Rule 5B has been inserted by which the rate of service tax shall be the rate as prevailing at the time the services are deemed to be provided.
- Under Rule 6, the benefit available to the service provider for deferment of payment of service tax up to the receipt of value of services has now been withdrawn, and henceforward, the payment will have to be made from the end of the month in which service is deemed to be provided.
- Under sub-rule (3) of Rule 6, the method of payment of tax or claiming of refund thereon has been clarified for assessee who have issued an invoice or are in receipt of value of services not provided by them.

This is consequence to the amendment of the point of taxation in the Act. Since the accrual concept has been introduced in this budget the problem arising of non receipt or less receipt against the invoice is very much a reality. Whenever any invoice is issued or payment is received there are all possibilities that the service may not be provided wholly or partially. However, under the new provisions the tax will be payable on raising of invoice or receipt of the payment. As soon as one of these two events occur the service tax is triggered and the tax will have to be paid. At a later stage when the service is not provided or the payment towards the invoice is not received, the assessee will have excess payment of service tax.

The new sub-rule (3) now allows the assessee to take credit of this excess payment. The original conditions for claiming of such credit remains. Only change is now the monetary limit for automatic claim is raised from ₹ 1 lac to ₹ 2 lacs.

- Under clause (iii) of sub-rule (4B) of Rule 6, the limit for adjustment of excess amount paid, in cases where the tax was paid without receipt of details of the payment towards taxable services, has been increased from ₹ 1 lakh to ₹ 2 lakhs for that relevant month or quarter.
- Under sub-rule (7B) of Rule 6, the person liable to pay service tax in relation to taxable services of money changing, the optional rate of service

tax at which the person can discharge his service tax liability has been reduced from 0.25% to 0.1% of the gross amount of currency exchanged.

L6. Amendment to CENVAT Credit Rules, 2004

Rule 3 of the CENVAT Credit Rules, 2004 have been amended retrospectively with effect from 18th April, 2006 to include the credit allowable for the payments made under section 66A of the Finance Act. This is flowing from the litigation where the assessee contended the allowability of the credit for the payments made under section 66A on reverse charge basis. However, Rule 3 sub-rule (1) clause (ix) mentioned only payments under section 66. Many courts have decided in favour of the assessee and now it has been made part of the law. This amendment is retrospectively effective from the date when this section 66A became operational.

L7. Exemptions

Exemption from service tax is being provided for the following:

- Membership fees collected by a club or association formed for representing industry or commerce, during the period on and from 16th June, 2005 to 31st March, 2008 (both days inclusive). Refund shall be made of all such service tax collected provided the application for refund has been made within 6 months from the date on which the Bill receives the assent of the President.
- To any person by a tour operator having a contract carriage permit for inter-state or intra-state transportation of passengers, excluding tourism, conducted tour, charter or hire service shall be deemed to have come into force with retrospective effect from 1st April, 2000. Refund shall be made of all such service tax collected provided the application for refund has been made within 6 months from the date on which the Bill receives the assent of the President.
- Services provided by an organizer of business exhibition outside India, from the whole of the service tax leviable thereon.
- Taxable service of execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65, when provided for the purpose of carrying out construction of a new residential complex or part thereof or completion and finishing services of a new residential complex or part thereof under the JNNURM and Rajiv Awaas Yojna, from whole of the service tax leviable thereon.
- Taxable services provided by an insurer carrying on General Insurance Business to any person for providing insurance under the Rashtriya Swasthya Bima Yojna from the whole of the service tax leviable thereon.
- Taxable services provided to any person located in India, when the goods are being transported from a place located outside India to a final

destination which is also outside India, from the whole of the service tax leviable thereon.

- Taxable service of aircraft operator in relation to transport of goods by aircraft mentioned in sub-clause (zzn) of clause (105) of section 65 from service tax leviable under section 66, to the extent so much of the value as is equal to the amount of air freight included in the value determined under section 14 of the Customs Act, 1962 or the rules made thereunder.
- Services provided in relation to execution of a works contract, referred to in sub-clause (zzzza) of clause (105) of section 65, when provided wholly within an airport and classified under sub-clause (zzm) of clause (105) of section 65 from whole of the service tax leviable thereon.
- Services provided in relation to execution of a works contract, referred to in sub-clause (zzzza) of clause (105) of section 65, when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways from whole of the service tax leviable thereon.

L8. Addition of new services

1. Services provided by a clinical establishment to any person. Clinical establishment has been defined as follows:
 - i. a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or
 - ii. an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,
 - iii. but does not include an establishment, owned or controlled by –
 - a) the Government; or
 - b) a local authority
2. Services provided by an air conditioned (whether wholly or partly) restaurant in relation to serving of food or beverages including alcoholic beverages.
3. Services provided by any hotel, inn, guest house, etc. for accommodation for a continuous period of less than 3 months.

L9. Other Amendments

1. Service Tax (Determination of Value Rules), 2006 have been amended and shall be referred to as Service Tax (Determination of Value) Amendment Rules, 2011:

A new Rule 2B has been inserted which specifies the valuation in respect of money changing, from or to INR (sub-clause (zm) and (zzk) of section 65(105)). The valuation shall be done as under:

Value = (Buying rate/Selling rate - RBI reference rate) X total units of currency

Further, the value shall be determined with reference to the other conditions mentioned in the notification at length.

2. Other Amendments:

- The exclusion provided to pre-school coaching and training center or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by any law from "commercial training or coaching center" has been removed.
- Definition of service provided in relation to repair, reconditioning or restoration of motor vehicles has been expanded to include such service provided by any person instead of only authorized service station. Further, the repair, reconditioning and restoration of services of three wheeler, scooter, auto rickshaw, and motor vehicle meant for goods carriage.
- Services provided by club/association to any person have been included instead of erstwhile condition of services provided to members only.
- Scope of services in respect of advice, consultancy or assistance have been expanded to include the following:
 - i. Services provided to any person by a business entity in respect of advice, consultancy or assistance in any branch of law,
 - ii. To any business entity, by any person in relation to representational services before any court, tribunal or authority,
 - iii. To any business entity, by an arbitral tribunal in respect of arbitration.

M. EXCISE

- Central Excise Duty to be maintained at 10% for non-POL products.
- CENVAT for non-petroleum goods increased from 4% to 5%.

M1. Legislative

1. Monetary limits for filing appeal, application, revision or reference by Central Excise Officer

New section 35R has been inserted in the Central Excise Act, 1944. The amendment gives CBEC the right to now prescribe a monetary floor to limit the litigations.

2. Amendment to Section 5A of the Central Excise Act, 1944

The limit of exemption in respect of specified manufacturers' stands extended with effect from the date as specified in the section 69 of the Act. The exemption has been extended from 6 months to two years from the date. This amendment is retrospective for the investment made from 25th August, 2003 to 31st March, 2006. Such specified manufacturer shall avail the benefit of exemption provided he submits the required details relating to the investments to the Investment Appraisal Committee within six months from the date the Bill receives assent from the President. If the Investment Appraisal Committee is satisfied with the details submitted by the specified manufacturer, it shall issue a certificate in the prescribed format by not later than 31st December, 2012.

3. Recovery of duties not levied/not paid/short paid/erroneously refunded

- Where it is found that any duty has not been levied or paid or short levied or short paid or erroneously refunded by fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the Act or Rules with intention to evade payment of duty, but the details relating to the transactions are available in the specified record, then the Central Excise Officer shall within a period of 5 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 along with the interest and penalty equal to 50% of such duty.
- The person chargeable with duty may before service of show cause notice, pay duty in full or in part along with the interest and penalty equal to 1% of such duty per month from the month following which duty was payable but not exceeding 25%.

4. Interest on delayed payment of duty

Section 11AA and 11AB - these two sections have been substituted by new section 11AA. This section now removes the period of 3 months available

for payment of duty and interest. It now provides for the payment on such terms as may be fixed at the time of determination of duty.

5. Penalty for short levy or non levy of duty in certain cases

Section 11AC – in the new section 11AC substituting the old 11AC, where details of any transactions 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, the person who is liable to pay duty shall also be liable to pay a penalty equal to 50% of the duty.

6. Liability under Act to be first charge

Section 11E – this gives the right of lien by way of first charge against the property of the assessee to the excise authority where dues are towards any amount of duty, penalty, interest or any other sum payable by an assessee.

7. Withdrawal of exemption from certain items (nominal rate of 1%)

- Reduction in number of items exempted from excise duty. 130 items brought under tax net with nominal duty of 1% ad valorem, provided no credit of the duty paid on input and input services is taken.
- Credit of duty paid on items that are being subjected to the levy of 1% would not be available to a manufacturer or service provider who buys them.
- Manufacturer of these goods cannot discharge the duty liability on them by utilizing CENVAT credit otherwise available in his books of accounts.

8. Lower rate of excise duty enhanced from 4% to 5 %

9. Withdrawal of exemption from fully exempt goods

- Paper manufactured from non-conventional raw materials (not exceeding 3500 per MT).
- Automatic looms and projectile looms.
- Micro processors (concessional rate of 5%).

10. Full Exemption provided

- Air conditioning plants (for installation in cold chain infrastructure).
- Goods required for expansion of existing mega/ultra mega power projects.
- Colour, unexposed cinematographic film in jumbo rolls of 400 feet and 1000 feet.
- Pipe fittings required for a water supply project.

M2. Changes in excise duties

Particulars of Products	Rates
Vehicles based on fuel cell technology	Concessional rate of 10%
LED	5%

Tariff

Item	Existing Rate	Proposed Rate
Packaged cement manufactured in a mini cement plant		
(i) Of retails sale price not exceeding ₹ 190 per 50 kg bag or of per ton RSP not exceeding ₹ 3,800	₹ 185 PMT	10% ad valorem
(ii) Of retails sale price exceeding ₹ 190 per 50 kg bag or of per ton RSP not exceeding ₹ 3,800	₹ 315 PMT	10% ad valorem + ₹ 30 PMT
Packaged cement manufactured in a plant other than a mini cement plant -		
(i) Of retail sale price not exceeding ₹ 190 per 50 kg bag or of per ton RSP not exceeding ₹ 3,800	₹ 290 PMT	10% ad valorem + ₹ 80 PMT
(ii) Of retail sale price exceeding ₹ 190 per 50 kg bag or of per ton RSP not exceeding ₹ 3,800	10% of retail sale price	10% ad valorem + ₹ 160 PMT
Cement clinker	₹ 375 PMT	10% + ₹ 200 PMT

N. CUSTOMS

- Peak rate of custom duty held at current level. Other changes in rates of duty.

N1. Legislative changes

- o The definition of "Assessment" amended to include "Self-assessment" under section 2. Thus, now under section 17, the 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.
- o Section 131BA: The amendment gives CBEC the right to now prescribe a monetary floor to limit the litigations.
- o Section 142A: This gives the right of lien by way of first charge against the property of the assessee to the customs authority where dues are towards any amount of duty, penalty, interest or any other sum payable by an assessee.

N2. Fully Exempted Customs Duty

Fresh Garlic (0703 20 00) imported by the National Consumer Co-Operative Federation and the Madhya Pradesh State Co-operative Marketing Federation - Exemption in excess of 30% from 15th January, 2003.

N3. Increase in Rate of Customs Duty

Safeguard duty on Imported Caustic Soda Lye: 15% ad valorem.

N4. Reduction in rate of Custom Duty

Particulars of Products	Rates
Specified agricultural machinery	From 5% to 2.5%
Micro irrigation equipment	From 7.5% to 5%
Petcoke and gypsum	Reduced to 2.5%
Cash dispensers	Fully exempt
Critical part/assemblies for Hybrid Vehicles	Fully exempt
Solar lanterns	Reduced from 10% to 5%
Drugs & Medicines 9804 10 00	Increased from 10% to 35%
Tea 0902	₹ 5 per kg.
Cardamom	₹ 50 per kg.
Granite (including black granite) porphyry and basalt	15%
Iron ore and concentrates	Increased from 20% to 30%
Raw Cotton	₹ 2,500 per ton to ₹ 10,000 per ton

An Overview of

THE FINANCE BILL 2011

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The provisions contained in the Finance Bill, 2011 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.

