UNION BUDGET 2012

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FOREWORD

With general elections still two years away and a challenging economic environment, the Honorable Finance Minister Shri Pranab Mukherejee needed to present a bold and reformist budget, however the dismal performance of the Congress at the recent state assembly polls and the increasing possibility of mid-term polls have forced him to present a rather timid budget.

The target fiscal deficit of 5.1%, though in line with market expectations would be a challenge to achieve considering that the Finance Minister has not made any substantial cuts in planned and unplanned expenditure. Furthermore, the budget heavily relies on increase in indirect taxes to grow revenues. The service tax and central excise rates have been brought closer to the pre-crisis level and the ambit of service tax has been increased to cover all services barring 17 mentioned in the negative list. These changes will have a negative bearing on corporate profitability and domestic consumption. On the Direct tax front, there have been substantial changes in administrative compliances with a view to curb tax evasion.

Targeting a real GDP growth rate of 7.6% for FY 12-13 compared to existing 6.9%, has necessitated strengthening of the investment climate, impetus to infrastructure spend and effective administration of subsidies.

As expected the budget has provided various sops for the ailing power sector in the form of access to lower cost funds, reduction of import duty on coal and extension of tax holiday for an additional year. The budget has also taken steps to inject liquidity in the economy by liberalizing the external commercial borrowing guidelines for the infrastructure sector and infusion of additional capital into the public sector banks.

No clear roadmap for introducing FDI in Multi brand retail and aviation sector as well as retrospective amendments to the direct tax act for Vodafone like deals will negatively impact foreign investment sentiment. Even the efforts of the FM to appease the investors through removal of investment restriction on VCFs, reduction of STT to 0.1% and introduction of the Rajiv Gandhi Equity Savings scheme did not bring much cheer to the markets.

'Year of recovery interrupted' aptly summarizes the efforts of the Honorable Finance Minister.

March 16, 2012 **Mumbai**

I DIRECT TAXES

A TAX RATES

1 Personal Tax

- Tax slab

Tax Rate	Present Slab	Proposed Slab
10%	INR 180,001 to INR 500,000	INR 200,000 to INR 500,000
20%	INR 500,001 to INR 800,000	INR 500,001 to INR 1000,000
30%	Above INR 800,000	Above INR 1000,000

  - Saving in tax of INR 22,000 for taxable income of INR 1,000,000.

- Basic exemption limits

Category	Present	Proposed
Individual, HUF, etc.	INR 180,000	INR 200,000
Woman (below 60 years)	INR 190,000	INR 200,000
Senior Citizen (60 to 80 years)	INR 250,000	INR 250,000
Senior Citizen (above 80 years)	INR 500,000	INR 500,000

2 Corporate Tax

Basic tax rate remains unchanged at 30%

Surcharge for domestic companies and foreign companies with total income of INR 1 crore or more also to remain same at 5% and 2% respectively

3 Education Cess and Secondary & Higher Secondary Cess

Remains unchanged at 2% and 1% respectively in all cases.

B MINIMUM ALTERNATE TAX (MAT)

- Effective MAT rate (including surcharge & cess) to remain unchanged at 20%.
- It is also proposed that the book profit for the purpose of section 115JB shall be increased by the amount standing in the revaluation reserve relating to the revalued asset which has been retired or disposed off, if the same is not credited to the profit and loss account.
- It is proposed that in case of a company to which Schedule VI of the Companies Act is not applicable, profit and loss account prepared in accordance with the provisions of part II of Schedule VI shall be taken as a basis for computing the book profit for MAT.

C ALTERNATE MINIMUM TAX (AMT)

- AMT to remain same at 18.50% of adjusted total income (ATI).
- Presently Limited Liability Partnerships are subject to AMT
- The provisions of AMT are proposed to be made applicable to every person other than a company who has claimed any deduction under any section (other than section 80P) included in Chapter VI-A or section 10AA.
- The provisions do not apply to an individual or a HUF or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person if the ATI of such person does not exceed INR 20 lakhs.

D REDUCTION IN THE RATE OF SECURITIES TRANSACTION TAX (STT)

- It is proposed to reduce STT with effect from 1st July 2012 in cash delivery segment from the existing 0.125% to 0.1%.

E DIVIDEND DISTRIBUTION TAX (DDT)

- With effect from 1st July 2012, dividend liable for DDT in case of a holding company is reduced by an amount of dividend received from its subsidiary if the subsidiary company has paid DDT on the same even if such holding company is a subsidiary of any other company.

F TAX ON FOREIGN DIVIDEND

- Dividend received from foreign subsidiary will continue to be taxed @ 15% plus applicable surcharge and cess for Financial Year 2012-13.

G INTERNATIONAL TAXATION

- Far reaching amendments made with retrospective effect from 1962 to tax income arising in respect of international transactions, essentially to offset decision of Supreme Court in the case of Vodafone.

- If shares or interest in a company or entity registered/ incorporated outside India, derives its value through assets/property located in India, then such shares or interest in the company shall be deemed to be situated in India.

    - The term “through” for the purpose of income deemed to accrue or arise in India shall include “by means of”, “in consequence of” or “by reason of”
    - Rights of management or control or any other rights whatsoever of an Indian company included within the definition of ‘Property’
    - The term “Transfer” to include disposing off or parting with an asset or any interest therein, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

- Section 195 has been amended to cast an obligation to deduct tax at source on non-residents whether or not such non resident has a residence or place of business or business connection or any other presence in India.

H OVERSEAS ASSETS

1 Compulsory filing of return for assets located outside India

Every resident person having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India has to furnish a return of income irrespective of whether he has taxable income or not during the year.

2 Reassessment of income / wealth in relation to any asset located outside India

Time limit for issue of notice for reopening an assessment is extended to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India and chargeable to tax has escaped assessment.

Similarly time limit for re-opening of wealth tax assessment is extended to 16 years where the wealth in relation to any asset (including financial interest in any entity) located outside India and chargeable to tax has escaped assessment.

These provisions shall be applicable for any assessment year beginning on or before the 1st April, 2012.

I TRANSFER PRICING

1 Transfer Pricing Regulations to even apply to certain domestic transactions

- Currently the assessing officer is empowered to disallow unreasonable expenditure incurred with related parties and to re-compute income of an undertaking eligible for profit linked deduction.

- It is now proposed to provide applicability of transfer pricing regulations in relation to domestic transactions with threshold limit of INR 5 crores, for:
  - any expenditure in respect of which payment has been made to related resident parties.
  - any transaction entered by an undertaking which is eligible to profit link deduction under section 10AA, 80C,801A with other undertaking of the same entity or with related resident party.
  - Any other transaction as may be prescribed.

2 Safe harbour limit

- By amendment in 2009, it was clarified that no adjustment to the transfer price will be made if transaction is within tolerance limit of 5% of the transaction price. It is now clarified that amendment made in 2009 is applicable even for earlier years.

- In amendment made in 2011, it was provided that tolerance limit will be notified by the Government. It is now provided that tolerance limit shall not exceed 3% of the transaction price.

3 Dispute Resolution panel

- Income tax department can now file appeal against the orders passed by the Dispute Resolution Panel (DRP) to the Income tax Appellate Tribunal.
- DRP has power to enhance the variation. It is clarified that the powers of the DRP include the power to consider any matter arising out of the assessment proceedings relating to the draft assessment order whether such matter was raised by the eligible assessee or not.
- This amendment will be effective retrospectively from the 1st April, 2009.

4 Advance Pricing Agreement (APA)

- Taxpayer can now enter into an APA with the Tax department for appropriate transfer pricing methodology for future transactions.
- APA shall include determination of the arm's length price (ALP) or specify the manner in which ALP shall be determined.
- The APA shall be valid for maximum of five years.
- The APA will be binding on the tax payer and tax department.
- The APA will not be binding if there is any change in law or facts having bearing on such APA.
- If Government finds that the agreement has been obtained by fraud or misrepresentation of facts, then it can declare such agreements to be void ab initio.

5 Definition of international transaction

- The term "international transaction" and "Intangible Property" defined exhaustively.

- 'International transaction' to include a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, losses or assets or such enterprise at the time of the transaction or at any future date.

- This amendment will take effect retrospectively from 1st April, 2002.

6 Examination of International Transaction not referred by the assessing officer

- It is clarified that Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction even though not referred to him by the AO if;
    - the tax payer has not furnished the report under section 92E; and
    - such transaction comes to the notice of TPO in the course of proceeding before him.

- This amendment will be effective retrospectively from 1st June, 2002.

7 Filing of Return of Income

- Currently assessee being company which is required to furnish a Transfer Pricing report under section 92E is allowed to file their tax return upto 30th November of the assessment year.

- It is proposed to extend due date for filing of return of income from 30th September to 30th November in case of a assessee's other than company, which is required to furnish a Transfer Pricing report under section 92E. This will be effective from 1st April 2012 (i.e. Assessment Year 2012-13).

8 Penalties

- International transaction / specified domestic transaction
    - Presently penalty of INR 100,000/- is prescribed for failure to furnish transfer pricing report.
    - Penalty of two per cent of the value of international transaction is proposed where the assessee fails to report such international

transaction or maintains or furnishes incorrect information or document in respect of such international transaction.

J GENERAL ANTI-AVOIDANCE RULE (GAAR)

- Provisions relating to GAAR have been introduced for applying the principle of 'substance over form'.

- Arrangement can be declared as an 'impermissible avoidance agreement' if it satisfies at least one of the following:
  - The arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length.
  - It results in misuse or abuse of provisions of tax laws.
  - It lacks commercial substance or is deemed to lack commercial substance.
  - Is carried out in a manner, which is normally not employed for bonafide purpose.

- An arrangement will be deemed to lack commercial substance if –
  - substance of the arrangement as a whole is inconsistent or differs significantly from the forms of its individual steps or part; or
  - it involves or includes-
    - round trip financing;
    - an accommodation party;
    - elements that have effect of offsetting or cancelling each other; or
    - a transaction which is conducted through one or more persons and disguise the value, location, source, ownership or control of fund which is subject matter of such transaction
  - it involves the location of an asset or of the place of residence of any party which would not have been so located for any substantial commercial purpose other than obtaining tax benefit for a party.

- The onus is on the taxpayer to prove the main purpose of the arrangement is other than that of obtaining tax benefit.

- Consequence, if the arrangement is held to be an impermissible
  - Disregarding or combining any step of the arrangement
  - Ignoring the arrangement for the purpose of taxation
  - Disregarding or combining any party to the arrangement
  - Reallocating expenses and income between the parties to the arrangement
  - Reallocating place of residence of a party

- Considering or looking through the arrangement by disregarding any corporate structure
- Re-characterizing equity into debt, capital into revenue etc.

- An approving Panel is to be set up consisting of three members of the rank of commissioner and above and who will give ruling on GAAR.

- Provision of GAAR shall apply even if such provisions are not beneficial to the assessee.

- Non-resident to whom a double tax avoidance agreement (DTAA) applies, shall not be entitled to claim relief under such agreement unless a certificate is obtained, of his being a resident in a country or specified territory from the Government of such country or specified territory.

K SHARE PREMIUM IN EXCESS OF FAIR MARKET VALUE TO BE INCOME

- It is proposed that if a company, not being a company in which the public are substantially interested, receives, from any resident, any consideration for issue of shares which exceeds the face value of such shares, then the difference between aggregate consideration received and the fair market value of the shares shall be chargeable to income tax as “Income from other sources”.

- This provision shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.

L CASH CREDITS – SHARE APPLICATION

- In case of a closely held company, if any amount is credited as share capital, share premium or share application money from a resident, then the company is required to explain the nature and source of such sum credited in the name of such person. If the company is not able to give satisfactory explanation, such amount can be added as unexplained credit.

- These provisions shall not apply if the person in whose name the sum is credited is a venture capital fund or a venture capital company.

M Capital Gains

1 Capital gain on transfer of residential property

- A new section 54GB provides for exemption from long term capital gain arising on sale of a residential property (house or plot of land) in the hands of individual or an HUF provided:
    - The net sale consideration is invested for subscription of equity shares of an eligible company (the company);
    - The company utilizes the amount for purchase of new asset within one year from the date of subscription in equity shares.
    - Transferor holds more than 50% of share capital or voting power of the company
    - Amount not utilised for purchase of new asset by the due date of furnishing return of income, is deposited in a specified bank account.

- The shares in the company and new asset acquired by the company will have lock in period of five years.

- An Eligible Company is one that is:
    - incorporated in the year in which capital gains on transfer of residential property takes place;
    - engaged in the business of manufacture of an article or thing
    - a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006

- New asset means; new plant and machinery or plant; but does not include any machinery or plant installed in office premises or residential accommodation including guest house; any office appliances including computers or computer software; any vehicle; or any machinery or plant allowed as deduction in computing business income.

- The benefit of above provisions shall be available in respect of residential property sold on or before 31st March, 2017.

2 Capital gain in cases where consideration not ascertainable

- Where consideration receivable on transfer of a capital asset is not ascertainable or cannot be determined, the fair market value of the capital asset shall be taken to be the full value of consideration for computing capital gains.

- Example of transaction: Transfer of capital asset for variable consideration

3 Capital gain on transfer of agricultural land

- The benefit of exemption from capital gain tax arising on sale of agricultural land on reinvestment of capital gain in agricultural land within specified period is being extended to HUF.

4 Conversion of sole proprietorship or firm into a company

- Conversion of sole proprietorship or a firm into a company is exempted from capital gains tax on fulfilment of certain conditions.

- Since there were no provision regarding taking the cost of acquisition of assets in the hands of the company at cost to transferor, views were taken that actual cost of such assets would be the cost at which the company took over such assets.

- It is now proposed that the cost of acquisition of assets in the hands of the company would be the cost in the hands of sole proprietary concern or the firm as the case may be.

- This amendment will take effect retrospectively from assessment year 1999-2000

5 Reference to Valuation Officer

- Under existing provisions, for computation of capital gain, an Assessing Officer can make reference to Valuation Officer for determination of fair market value (FMV) of a capital asset, if in his opinion, the value of the asset claimed by the assessee is less than its FMV. Thus, it did not cover cases where the value of asset is higher than FMV.

- This provision is being amended to provide that a reference may be made by the Assessing Officer to the Valuation Officer, if in his opinion, the value declared by the assessee is at variance, whether higher or lower, from the FMV.

N PROVISIONS RELATING TO VENTURE CAPITAL FUND (VCF) OR VENTURE CAPITAL COMPANY (VCC)

- Sectoral restrictions for claiming exemption of income of VCF/VCC have been dispensed with.
- Income accruing to VCF/ VCC is now taxable in the hands of investor on accrual basis with no deferral.
- The exemption from applicability of TDS provisions on income credited or paid by VCF/ VCC to investors is withdrawn.

O SOFTWARE PAYMENTS

- It is clarified that whenever "right, property or information" is transferred (partially or wholly), the same will also include transfer of all or any right for use or right to use computer software including by way of granting of licence. Further the medium through which such right is transferred is not relevant.

- Royalty to include consideration in respect of any 'right, property or information' whether or not:
  - the possession or control of such right, property or information is with the payer
  - such right, property or information is used directly by the payer
  - the location of such right, property or information is in India.

- For the purpose of royalty, it has been clarified that process includes transmission by satellite, cable, optic fibre or by any other similar technology whether or not such process is secret.

- All the above amendment is made with retrospective effect from 1st June 1976. As a result of above amendments, payments for acquiring software products will be treated as payment towards royalty and would be liable to tax on source basis under the Income tax Act.

P COMPUTATION OF PROFIT AND GAINS FROM BUSINESS

1 Power Sector

- Sunset clause for deduction u/s.80IA for power sector extended by one year

- The benefit of Additional Depreciation @ 20% on actual cost of new plant & machinery acquired after 31.03.2012, extended to the assessees engaged in the business of generation or generation and distribution of power.

2 Computation of profit and gains of business on presumptive basis

- Presumptive tax at 8% of turnover is payable in respect of eligible business whose turnover does not exceed 60 lakhs. It is now clarified that computation of profit and gains of business on presumptive basis shall not be applicable to persons -
  - carrying on profession of legal, medical, engineering, architect, interior decoration etc
  - earning income in the nature of commission or brokerage
  - carrying on any agency business

- Criteria of total turnover/gross receipts for eligible business is being increased from INR 60 lakhs to INR 100 lakhs w .e. f. AY 2013-14.

3 Expenditure on Scientific Research

- Presently, weighted deduction of 200% of the expenditure (excluding expenditure on land and building) incurred till 31st March 2012 on scientific research on an approved in-house research facilities maintained by a company engaged in the businesses of bio-technology or any business of manufacture or production of any article or thing, not being an article or thing specified in the list of Eleventh Schedule is allowed.

- The above benefit of weighted deduction is being extended till 31st March 2017.

4 Expenditure on specified business

- Deduction of 100% in respect of capital expenditure incurred (excluding expenditure on land or goodwill or financial instrument) is extended to the following businesses commencing on or after 1st April 2012 :-
  - Setting up and operating an inland container depot or a container freight station notified under the Customs Act, 1962
  - Bee-keeping and production of honey and beeswax
  - Setting up and operating a warehousing facility for storage of sugar

- Increase in deduction from 100% to 150% of capital expenditure (excluding expenditure on land or goodwill or financial instrument) in respect of the following specified businesses commencing its operation on or after 1st April 2012 :-
  - setting up and operating cold chain facility
  - warehousing facility for storage of agricultural produce
  - building and operating hospital in India with minimum 100 beds
  - developing/building housing project under affordable housing scheme
  - production of fertilizer in India

- An entity carrying on the business of building and operating two star or above category hotel as classified by Central Government will continue to be eligible for deduction of 100% even if it transfers the operations thereof to another person while continuing to own the hotel. This amendment will apply retrospectively from A.Y.2011-12.

5 Tax audit

- Criteria for turnover/gross receipts for applicability of Tax Audit u/s.44AB is being increased as under:

Person carrying on	Existing limit	Proposed limit
Business	INR 60 lakhs	INR 100 lakhs
Profession	INR 15 lakhs	INR 25 lakhs

- The due date for furnishing the Tax Audit Report is being amended from 30th September of the assessment year to the due date of furnishing the return of income u/s.139(1).

6 Amendment to daily tonnage income of shipping company

- The Tonnage Tax Scheme provides for taxation of income of a shipping company on presumptive basis. Under this scheme, the operating profit of a shipping company is determined on the basis of tonnage capacity of its ships.

- It is proposed to revise the rate of daily tonnage income under this scheme.

7 Disallowance of expenses where taxes are not deducted at source

- As per the existing provisions, if tax is not deducted at source on payment of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or after deduction, is not paid before the due date of filing of return, then such expenses are not allowable.

- Where an assessee makes specified payment to a resident payee without deduction of tax then no disallowance of such expenditure will be made in the hands of the payer if the payee:
  - has furnished his return of income
  - has included such sum in his return of income
  - has paid tax due on the income declared

8 Disallowance of unreasonable expenditure

- Definition of Specified Person u/s 40A(2)(b) has been expanded to include a Company in which any company (that has substantial interest in the assessee) has substantial interest.

Q AMALGAMATION AND DEMERGER

1 Transfer in case of amalgamation

- It has been clarified that it shall not be necessary to issue shares where the amalgamated company itself is a shareholder in amalgamating company (e.g. where a subsidiary company amalgamates into the holding company).

2 Issue of shares in case of Demerger

- It has been clarified that it shall not be necessary to issues shares to existing shareholders on a proportionate basis where the resulting company itself is a shareholder of the demerged company

R PROVISIONS RELATING TO TAX DEDUCTED AND TAX COLLECTED AT SOURCE

1 Changes in rate, threshold limit and scope of TDS w. e.f. 1st July 2012:-

Sec.	Nature of payment	Scope extended to	Existing		Proposed	
			Threshold Limit	Rate	Threshold limit	Rate
193A	Interest on listed debentures	HUF	2,500	10%	5,000	10%
194E	Payment to non resident sportsmen or sports association	Non-resident Entertainer	No limit	10%	No limit	20%
194LA	Payment of compensation on compulsory acquisition of land	-	100,000	10%	200,000	10%

- Remuneration or fees or commission payable to director (not being in the nature of salary) will attract TDS u/s 194J as fee for professional or technical services at the rate of 10%.

- Section 194LAA has been inserted w. e .f. 1st October 2012 for TDS on transfer of immovable properties being land or any building:-

Provisions	Rate	Threshold limit
▪ Applicable to transferee responsible for paying consideration to a resident transferor on transfer of any immovable property (other than agricultural land) ▪ The transferee is not required to obtain TAN number and to file TDS return. ▪ Registrar under the Indian	▪ 1% on sales consideration. ▪ If sales consideration is less than stamp duty value, then on the stamp duty value.	▪ INR 50 lakhs where property is situated in specified area ▪ INR 20 lakhs where property is situated in any other area

Registration Act, 1908 shall not register the transfer of any immovable property unless the transferee furnishes proof of deduction and payment of TDS in the prescribed form		

- TDS on interest paid (to the extent of the rate approved by Central Government) by specified company to a non resident in respect of borrowing made in foreign currency from sources outside India between 1st July, 2012 and 1st July, 2015, under a loan agreement approved by the Central Government, to be deducted at the rate of 5%. This will be effective from 1st July 2012.

2 Rationalization of provisions in cases of TDS defaults

- It has been clarified that the payer who fails to deduct tax at source on payment of any sum to a resident payee shall not be deemed to be an assessee in default if such resident payee -
  - has furnished his return of income u/s 139
  - has taken into account such sum for computing income
  - has paid the tax due on income declared by him in such return of income
- The payer should furnish a certificate to this effect as prescribed
- The payer will be liable to interest on the amount of non/short deduction from the date on which tax was deductible to the date on which the payee discharge tax liability directly.

- Similar amendment has been proposed in relation to Tax Collection at Source

- The time limit for passing an order u/s 201 of the Income Act has been extended with retrospective effect from 1st April 2010 from existing four years to six years in cases where no statement as referred to in section 200 has been filed.

3 Rectification of Intimation after processing of TDS statement

- Currently, after processing of TDS statement, intimation is generated specifying the amount payable or refundable. The intimation so generated is not subject to rectification under section 154 and is not deemed as notice of demand under section 156.

- It is proposed to make such intimation subject to rectification under section 154.

4 Default of furnishing statement u/s 200(3) & 206C

- If a person fails to deliver a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, INR 200/- for every day during which the failure continues subject to maximum of the amount of tax deductible or collectible.

- The provisions of this section shall apply to such statement which is to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st July, 2012.

5 Scope of Tax Collected at source widened

- It is now proposed to bring cash sale of bullion and jewellery and trading of certain minerals under the provisions of Tax Collected at Source w. e. f 1st July, 2012.

- Seller is required to collect tax at source at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds INR 200,000 and the sale is in cash. This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.

- In case of sale of coal, lignite and iron ore, the seller is required to collect tax at source at the rate of 1% from the buyer. However, no tax is required to be collected, if these minerals are utilized by the buyer for the purpose of manufacturing, processing or producing articles or things.

6 Failure to file statement of tax deduction / collection at source

- A penalty of INR 10,000/- to a maximum of INR 100,000/-, has been proposed for failure to furnish statement of tax deduction/collection at source or furnishing incorrect information. This will be applicable in respect of statement of tax deduction/collection at source to be furnished on or after 1st July 2012.

- Penalty for failure to furnish statement of tax deduction/collection at source before 1st July 2012 was INR 1,000/- per day of default subject to maximum of the amount of tax deductible or collectible.

S DEDUCTIONS UNDER CHAPTER VI-A

- The amount eligible for deduction u/s 80C in respect of premium on insurance policy issued on or after 1st April 2012 is reduced from 20% of capital sum assured to 10% of capital sum assured.

- Deduction u/s 80D in respect of health insurance premium to include payment made for preventive health check-up for self, spouse, dependent children or parent upto INR 5,000/- within the existing limits.

- No deduction to be allowed u/s 80G and u/s 80GGA in respect of any donation made for an amount exceeding INR 10,000 by cash.

- Deduction of INR 10,000 u/s 80TTA shall be allowed to an individual or HUF for interest on deposits (not being time deposits) in savings account with
  - a banking company
  - a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
  - a post office

- No deduction shall be allowed to an individual or HUF if such interest income is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals.

T MISCELLANEOUS

1 Gift received by HUF

- Under the existing provisions any sum or property received by an individual or HUF on or after 1st October, 2009 for inadequate consideration or without consideration is taxable as “Income from other sources”. However, in the case of an individual, receipt from relative is not taxable.

- It is proposed to include members of HUF in the definition of relative. Thus, receipt by HUF from its members shall not be regarded as income in the hands of the HUF.

- This amendment will take retrospective effect from the 1st October, 2009.

2 Exemption for sum received under Insurance Policy reduced

- The exemption for sum received under an insurance policy issued on or after 01.04.2012 is available only if the premium for the policy does not exceed ten percent of the actual capital sum assured.
- For policies issued on or after 01.04.2003 but before 01.04.2012, exemption will continue to be available if the premium does not exceed twenty percent of the actual capital sum assured.

3 Tax on Unexplained credit, etc.

- A new provision is inserted to provide that unexplained credits, money, investment, expenditure, etc. as referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D to be taxed at 30% (plus surcharge and applicable cess).
- No deduction to be allowed in respect of any expenditure or allowance in computing deemed income under the said sections.

4 Assessment of charitable organization

- It is proposed that it is not necessary to withdraw or cancel registration to deny exemption to a charitable trust or institution, where such trust or institution does not remain charitable due to carrying on of any activity in the nature of trade, commerce or business; and the aggregate value of receipts from the commercial activities exceeds INR 25,00,000.
- This amendment will take effect retrospectively from 1st April, 2009.

5 Provisions relating to Senior Citizens

- Age limit for the purpose of availing the following benefits reduced from 65 years to 60 years:
  - Deduction in respect of health insurance premium u/s 80D
  - Deduction in respect of medical treatment of specified ailments and disease u/s 80DDB

- Furnishing of declaration in Form 15H for non deduction of tax at source

- Senior citizen (60 years and above) not having any income chargeable under the head "Profits and gains of business or profession", shall not be liable to pay advance tax and such senior citizen shall be allowed to discharge his tax liability by payment of self assessment tax.

- This amendment will take effect retrospectively from AY 2012-13

6 Advance Tax

- Presently where the assessee receives any amount (on which the tax was deductible or collectible) without deduction or collection of tax, it has been held by various Courts that he is not liable to pay advance tax to the extent the tax is deductible or collectible from such amount.

- It is now proposed that where a person has received any amount without deduction or collection of tax, advance tax shall be paid on such amount.

- Under the existing provisions of section 234D (inserted with effect from 1.6.2003), an assessee is liable to pay interest at 1.5% p.m. on refund granted to the assessee which is found to be in excess.

- It is proposed to clarify that the provisions of section 234D would be applicable to any proceedings which are completed after 1st June 2003 irrespective of assessment year to which it pertains.

- This amendment will take effect retrospectively from the 1st June, 2003.

7 Notification of a class of search cases where compulsory reopening of past six years not required

- Currently where search is conducted or a requisition is made, it is mandatory to issue a notice for filing tax returns for 6 assessment years immediately preceding the assessment year relevant to the previous year of search.

- Now the Central Government is empowered to notify cases in which the Assessing Officer shall not issue notice for initiation of proceedings for preceding 6 assessment years. This would result in initiating assessment proceedings only for the assessment year relevant to the previous year in which search or requisition has been made.

8 Search and seizure

- Presently penalty of 10% is levied where undisclosed income is found during the course of search; except where the assessee admits undisclosed income in the statement recorded during search, specifies and substantiates the manner in which such income has been derived and pays tax with interest in respect of such undisclosed income.

- Now penalty is proposed to be amended as under:

	Penalty as % of undisclosed income	**Remarks**
A	10%	Where the assessee **admits** the undisclosed income, specifies and substantiates the manner in which such income was derived, pays tax with interest on such income and declares such income in the return of income for the specified previous year
B	20%	In the course of search the assessee **does not admit** the undisclosed income, declares such income in the return of income for the specified previous year and pays tax with interest on such income
C	30% to 90%	Not covered under a & b above.

II SERVICE TAX

A RATES OF TAX

- Effective rate of Service Tax increased from 10.30% to 12.36%.

- Consequential changes made in tax rate in respect of:

    - Services in relation to sale & purchase of foreign currency.
    - Services in relation to lottery.
    - Works Contract Services (effective rate from 4.12% to 4.94%).
    - Reversal of cenvat credit (effective change from 5.15% to 6.18%).

- In respect of life insurance premium the rates have been increased from 1% to 3% in the first year and from 1% to 1.5% in the subsequent years.

- Air Travel (economy class) to be taxed at effective rate of 4.94% of taxable service as against fixed tax of INR 150 & INR 750 for domestic & international journey respectively.

- Above changes are effective from 1st April 2012.

B PARADIGM SHIFT – WIDENING OF APPLICABILITY & COVERAGE

- The scope and applicability of Service Tax has been significantly expanded and widened by defining ‘Services’ and ‘Person’ and introducing ‘Negative List’ and ‘Declared List’.

- Services have been defined as any activity carried by a person for another for consideration. All services except those appearing in negative list and those specifically exempted would now be chargeable to Service Tax.

- Definition for the term ‘person’ has been introduced. The definition is exhaustive and wide. This would result in withdrawal of various exemptions which were based on certain category of service receivers or providers.

- The Negative List shall comprise of the following services

- Services by government or local authority (except few services)
- Services by Reserve Bank of India
- Services by Foreign Diplomatic Missions
- Services relating to Agriculture
- Trading of goods
- Any process amounting to manufacture or production of goods
- Advertisements other than advertisement broadcast by radio or television
- Road / Bridge toll charges
- Betting, gambling or lottery
- Admission to entertainment event / amusement facilities
- Transmission or distribution of electricity
- Education services (subject to conditions)
- Renting of residential dwelling for use as residence
- Services of (a) extending deposits, loans or advances (b) *interse* sale & purchase of foreign currency amongst banks/authorized dealers
- Service of transportation of passengers other than in railway by first class or air-conditioned coach and services in vehicles without meter
- Service by way of transportation of goods except by goods transport agency or courier agency
- Funeral, burial, crematorium services

- Taxable Services will now include Declared services, but following are to be excluded:

  - Transfer of title in goods or immovable property
  - Transaction in money or actionable claim
  - Services provided by employee to employer
  - Fees taken in any court or tribunal

- Declared Services comprise of :

  - Renting of immovable property
  - Construction of complex, building, civil structure or part thereof, except where entire consideration is received after the completion certificate
  - Temporary transfer or permitting use of intellectual property
  - Information technology software related services
  - Agreeing to refrain from an act, or to tolerate an act / situation, or to do an act
  - Hiring, leasing or licensing of goods
  - Activities in relation to delivery of goods on hire purchase or payment by installments

- Service portion in the execution of works contract
- Service portion in an activity wherein food or any other article of human consumption / drink is supplied in any manner as a part of activity

- Exempted services include:

  - Services provided by United Nations
  - Certain medical services
  - Veterinary services
  - Charitable activities
  - Renting and other services for religious purposes
  - Services based on clinical research organizations
  - Services relating to arts, culture or sports
  - Services provided in connection with mid-day meals and educational services
  - Services provided by sports body
  - Sponsorship of tournament and championship organized by certain bodies, etc.
  - Infrastructure related and certain other services provided to government and others
  - Services by performing artist
  - Journalist services
  - Hotels, etc. with room rent below INR 1,500
  - Restaurants, etc. unless air-conditioned or having license to serve liquor
  - Transport and other services in connection with certain / essential goods
  - Hiring to state transport undertaking / good transport agency
  - Transport of passengers in certain cases
  - Certain services provided to government or local authority
  - General insurance business under specified scheme
  - Services provided by an incubate
  - Services by a society to its own members
  - Services in respect of business exhibition held outside India
  - Certain job work activity related to agriculture and jewellery
  - Few distribution and marketing services
  - Certain telephone services
  - Services by way of slaughtering of bovine animals
  - Certain services received from service provider located outside taxable territory

- To support the new approach of negative list, draft Place of Provision of Services Rules, 2012 has been proposed. The draft rules contains principles on the basis of which taxing jurisdiction of a service can be determined. A service shall be deemed to be provided where the receiver is located unless determined otherwise.

C AMENDMENT IN POINT OF TAXATION RULES, 2011

- Definition of continuous supply of services has been amended to include services provided on recurrent basis. Also for services to fall under the definition there should be an obligation for payment periodically or from time to time.

- In case of continuous supply of services, the date of completion of each event as specified in the contract shall be deemed to be the date of completion of services.

- "Date of Payment" now defined to be earlier of (a) entry for payment recorded in books of account or (b) credit in the bank account of service provider.

    - In the case of (a) change in effective tax rate and/or (b) service being taxed for first time date of credit in the bank account will be considered as "Date of Payment" if the credit for instrument is not received in bank account within four working days of change.

- In case of new taxable services, no tax is payable

    - To the extent of invoice issued and payment received before such service become taxable.
    - If payment has been received before such service become taxable and invoice has been issued within 14 days of introduction of new service.

- The option of paying Service Tax on receipt basis for individuals, proprietors and partnerships firms providing certain services (namely architects, interior decorators, chartered accountants, cost accountants, company secretaries, consulting engineers, scientist / technology institution and lawyers) has been withdrawn.

D AMENDMENT IN SERVICE TAX RULES, 1994

- The time period for issue of invoice has been extended from 14 days to 30 days from the date of completion of taxable service or receipt of payment towards such services whichever is earlier. For Banks / NBFC's and other Financial Institutions providing banking & other financial services the time period has been extended to 45 days.

- In case of individuals, partnership firms (defined as including LLP for these Rules) where the aggregate value of services is lower than INR 50 lacs in previous financial year, the service provider has the option to pay tax on taxable service upto INR 50 lacs on the receipt for the services rendered.

- Excess amount of Service Tax paid in particular month/quarter can now be adjusted without any limit against liability of succeeding month/quarter (condition that such excess is not on account of interpretation of law etc remains). Earlier the maximum amount which could be adjusted was INR 2 lacs.

E AMENDMENT IN CENVAT CREDIT RULES, 2004

- Simplified procedure to be prescribed for refund of unutilized credit on account of export.

- Credit is being allowed on motor vehicles (except those under specified headings). The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed.

- Cenvat credit on inputs / capital goods is now allowed to be taken on delivery (subject to condition) instead of earlier provision of receipt of input / capital goods at service providers' premises.

- Rules are amended to prescribe manner of distribution of Service Tax credit on common services amongst Units on the basis of the turnover and specific credits not to be distributed to other Units.

F AMENDMENT IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

- As per existing Rules, value of taxable service involved in the execution of a works contract was computed as gross amount invoiced less value of goods.

a. Now it is proposed that if value of taxable services cannot be arrived as above,
   i. In case of contracts for original works (e.g. new constructions), Service Tax is payable on
      i. 40% of total amount charged for the works contract.
      ii. 25% of total amount charged if the same includes value of land.

   ii. In case of other works contract (other than original works) including completion and finishing services, Service Tax will be payable on 60% of total amount charged.

b. It has been clarified that Cenvat credit of excise duty paid on the goods, property which is transferred in the execution of the works contract will not be available.

- The value of taxable service in supply of food or drinks in a restaurant or outdoor catering shall be as under:

Description	% of total amount
Services at a restaurant	40
Outdoor catering service	60

- Demurrage value is now included in value of taxable services.

- The following are excluded from the value of taxable services
  - Interest on deposit & delay in payment
  - Accidental damages on unforeseen actions

G EXEMPTIONS AND AMENDMENT OF EXEMPTIONS

- The applicability of Service Tax on Railway freight in respect of certain specified goods has been deferred from 1st April 2012 to 1st July 2012.

- Retrospective Exemption

Particulars of Exemption	Retrospective exemption from
Repair of roads	16th June 2005
Management, maintenance or repair services in relation to non commercial government buildings	16th June 2005
Non reversal of Cenvat Credit in case of services provided to the authorized operations of SEZ	10th February 2006
Exempt services provided by club & association (including registered Co-op societies) to all its members for specified project. Earlier only associations of dyeing units were exempt.	16th June 2005

Note – Separate provisions are given for refund of Service Tax paid on above exempted services.

- Other exemption on taxable services (Effective Date not notified)

Description of taxable service	Taxable Service Value % (subject to condition)
Services where abatement is available	
Financial leasing services, equipment leasing and hire purchase	10
Transport of goods by rail	30
Supply of food / drinks in a premises including Pandal & Shamiana or any place arranged for function	70
Transport of goods by road by Goods Transport Agency	25
Services provided in relation to chit fund	70
Renting of any motor vehicle for carrying passengers	40
Tour Operator	
Package tour	25
Arranging accommodation	10
Other services	40

Description of taxable service	Taxable Service Value % (subject to condition)
Services where abatement is introduced	
Transport of passengers by rail	30
Transport of passengers by air	40
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places for residential or lodging purposes.	60
Transport of goods in a vessel from one port in India to another	50

Note – Other services on which exemption / abatement was available are now not covered (e.g. business auxiliary services in relation to production / processing of cycles, cycle rickshaw etc).

H NEW REVERSE CHARGE MECHANISM (EFFECTIVE DATE NOT NOTIFIED)

- In certain cases the onus of payment of Service Tax on reverse charge basis has been split between the service provider and service receiver. The liability and obligation is tabulated hereunder.

Description of a service provided	% of tax payable by the person providing service	% of tax payable by the person receiving service
Existing Taxable Services under Reverse Charge Mechanism		
Insurance agent to any person carrying on insurance business	Nil	100%
Goods transport agency in respect of transportation of goods by road	Nil	100%
Sponsorship	Nil	100%
Services provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%
New Taxable Services under Reverse Charge Mechanism		
Arbitral tribunal services	Nil	100%
Individual advocate	Nil	100%

Support service by Government or local authority	Nil	100%
(a) renting or hiring any motor vehicle designed to carry passenger on abated value. (b) renting or hiring any motor vehicle designed to carry passenger on non abated value.	Nil 60%	100 % 40%
Supply of manpower for any purpose	25%	75 %
Works contract	50%	50%

Note – Certain services which were earlier taxable are now not covered.(e.g. telecommunication)

I OTHER AMENDMENTS

- Penalty is waived on Service Tax due on renting of immovable property service provided full payment of tax along with interest is made within 6 months of prescribed date.

- Principles of interpretation of specified descriptions of services or bundled services introduced.

- Special Audit of books of account of assessee can be ordered by Commissioner of Central Excise in specified circumstances.

- New provision included in respect to date of determination of rate of tax, value of taxable service and rate of exchange.

- Changes in definition of 'Aggregate Value' considered for determining basic exemption limit from levy of Service Tax. All invoices value to be considered on accrual basis instead of cash basis. This is effective from 1st April 2012.

- Increase in time limit for issuance of notice for specified category of offences prescribed under section 73(1) from one-year to eighteen months.

- New provision introduced for follow-on notices.

- Certain provisions of Central Excise for settlement commission, revision mechanism, manner of compounding of offences etc. are now applicable to Service Tax to the extent possible.

- Service tax provisions are amended in line with Central Excise Act, 1944 so as to harmonize the limitation of filing assessee appeals before Commissioner (Appeals) and revenue appeals to Tribunal.

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