UNION BUDGET 2013

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FOREWORD

This is the last budget of the 5 year UPA government term before the country enters polls. The Finance minister was set with the challenging task to rein in the fiscal deficit on one hand and manage the demands of a populist budget on the other. As usual, the experienced Honourable Finance Minister, Mr. Chidambaram has kept everyone satisfied though no one happy.

The Budget 2013 has set an ambitious fiscal deficit target of 4.8% for F.Y. 2013-14, which, though directionally correct seems challenging to achieve in the absence of any concrete pro-growth reforms. On the positive front, the budget focuses on creating a stable regulatory environment for individuals, businesses and investors.

No major changes have been introduced on the direct and indirect tax front with the exception of the introduction of a commodities transaction tax on all non-agro commodities. Measures have also been introduced to curtail tax avoidance, significant among them are the introduction of the service tax amnesty scheme and the levy of 22.66% tax on share buybacks by unlisted companies.

The Finance Minister has spared the ultra-rich from estate taxes or higher slab tax rates, opting to go instead with a levy of surcharge for individuals earning more than INR 1 crore per annum. Little effort has been made to appease the 'aam aadmi' with a meager INR 2,000 tax credit for individuals with total income of less than INR 5 Lacs.

All in all, Budget 2013 is positive but only in terms of no unpleasant introductions with no serious big bang reforms to boost growth.

February 28, 2013 **Mumbai**

I DIRECT TAXES

A TAX RATES

♦ PERSONAL TAX

- No change in the Basic Tax Slabs.
- Surcharge of 10% levied in case of individuals, HUF etc. having total income exceeding INR 1 crore. Effective Maximum Marginal Tax Rate is 33.99% as against present rate of 30.9%.
- Tax rebate upto INR 2,000 for individuals having income below INR 5 Lacs.

♦ CORPORATE TAX

- Basic tax rate remains unchanged at 30% for domestic companies and 40% for foreign companies.
- Effective tax rate after including applicable surcharge and education cess:

Total Income	Domestic Company		Foreign Company	
	Present	Proposed	Present	Proposed
Upto INR 1 crore	30.900%	30.900%	41.200%	41.200%
Above INR 1 crore upto INR 10 crore	32.445%	32.445%	42.024%	42.024%
Above INR 10 crore	32.445%	33.990%	42.024%	43.260%

♦ FIRMS

- Basic tax rate remains unchanged at 30%.
- Surcharge of 10% in case total income exceeds INR 1 crore.

- **Education Cess and Secondary & Higher Education Cess (Education cess)**

  Remains unchanged at 2% and 1% respectively.

B Dividend Distribution Tax - Applicable to Companies

- DDT rate remains unchanged at 15%.
- Increase in surcharge from 5% to 10%. Effective rate of DDT is 16.995%.
- While computing DDT payable by a domestic holding company, dividend received from its foreign subsidiary company during the financial year is to be deducted, if the domestic holding company is liable to tax @15% on such dividend received. This amendment will take effect from 1st June, 2013.

C Minimum Alternate Tax - Applicable to Companies

- MAT rate remains unchanged at 18.50%.
- Increase in surcharge from 5% to 10% where income exceeds INR 10 crores. Effective rate of MAT is 20.961%.

D Alternate Minimum Tax – Applicable to Firm, LLP

- AMT remains unchanged at 18.50%.
- Levy of 10% surcharge where income exceeds INR 1 crore. Effective rate of AMT is 20.961%.

E Securities Transaction Tax

Nature of taxable securities transaction	Present (%)	Proposed (%) w.e.f 1.06.2013
Delivery based purchase of units of an EOF	0.100	NIL

Delivery based sale of units of an EOF	0.100	0.001
Sale of futures in securities	0.017	0.010
Sale of EOF to mutual fund	0.250	0.001

F Commodities Transaction Tax

- CTT @ 0.01% levied on sale of taxable commodities (other than agricultural commodities) traded in recognized exchanges.
- CTT paid to be allowed as deduction if income from above transactions is taxable as business income.

G Tax on Royalty and Fees for Technical Services

In case of non resident tax payer deriving income from Royalty and Fees for Technical services

- pursuant to agreement entered into after 31st March 1976 and
- which is not effectively connected with the permanent establishment of the non resident in India

tax rate increased from 10% to 25% on the gross amount of Royalty and FTS. Where DTAA provides for lower rate of tax, such lower rate would apply.

H Tax on Foreign Dividend

Dividend received by a domestic holding company from its foreign subsidiary will continue to be taxed @ 15% plus applicable surcharge and education cess for F.Y. 2013-14.

I Direct Tax Code

Direct Tax Code Bill proposed to be introduced before the end of the budget session.

J COMPUTATION OF PROFIT AND GAINS FROM BUSINESS

INVESTMENT ALLOWANCE

- A company engaged in the business of manufacture or production of an article or thing will be entitled to incentive for acquisition and installation of new plant or machinery as under:

A.Y.	Deduction
2014-15	15% of the actual cost of the new asset acquired and installed during F.Y. 2013-14, if the cost of such assets exceed INR 100 crores.
2015-16	15% of the actual cost of the new assets acquired and installed during the period 1st April 2013 to 31st March 2015 as reduced by the amount of deduction allowed above

- New Asset means plant and machinery (other than ship or aircraft) and does not include second hand plant or machinery, plant and machinery installed in office premises, any residential premises or guest houses, office appliances, vehicles or any plant and machinery whose full cost has been allowed as deduction.

- The New Asset cannot be transferred for a period of 5 years except in a case of amalgamation or de-merger. However, the above condition shall continue to apply to the amalgamated company or resulting company, as the case may be.

IMMOVABLE PROPERTY HELD AS STOCK IN TRADE

- Presently, when an Immovable Property (land and/or building) which is a capital asset is transferred at a value which is lower than SDV, SDV can be adopted as full value of consideration while computing capital gains. Similar provisions shall now be applicable for immovable property held as stock in trade and will be taxed under the head "Profits and gains of business or profession".

- In case the date of agreement under which consideration for transfer of asset is fixed is at variance with the date of registration for the transfer of such asset, the SDV may be taken as on the date of the agreement for transfer, provided the amount of consideration or a part thereof for the transfer has been paid by any mode other than cash on or before the date of the agreement.

- **POWER SECTOR**

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

- **DEDUCTION FOR ADDITIONAL WAGES IN CERTAIN CASES**

  - Presently 30% deduction is allowed for additional wages paid to the new regular workmen employed during the year by an Indian company in its industrial undertaking engaged in manufacture or production of article or thing. The deduction is available for three years including the year in which such employment is provided.

  - It is proposed to restrict the benefit of deduction only to Indian Companies deriving profits from manufacture of goods in its factory.

K TAX ON BUY-BACK OF UNLISTED SHARES

- Presently consideration received by a shareholder on buy-back of shares by the company is taxable as capital gains.

- Now it is provided that where an unlisted company buys back its shares, it will be liable to tax @ 20% (effective tax rate 22.66%) of the consideration paid to the shareholder as reduced by the sum received at the time of issue of such shares.

- The income arising to the shareholder as a result of buy back will be exempt. As a consequence, if the shareholder suffers loss on buy back of shares, such loss will not be allowed as capital loss.

- This amendment will take effect from 1st June, 2013.

L IMMOVABLE PROPERTY RECEIVED FOR INADEQUATE CONSIDERATION

- Where immovable property is received by an individual or an HUF for inadequate consideration, difference between SDV and consideration paid shall be deemed income in the hands of recipient.

- In case the date of agreement under which consideration for transfer of asset is fixed is at variance with the date of registration for the transfer of such asset, the SDV may be taken as on the date of the agreement for transfer, provided the amount of consideration or a part thereof for the transfer has been paid by any mode other than cash on or before the date of the agreement.

M AGRICULTURAL LAND

Presently, following land is not considered as Agricultural land for the purpose of definition of capital asset and agricultural income

(a) Agricultural Land situated in an area within jurisdiction of a municipality or a cantonment board having population of over ten thousand according to preceding census or

(b) Agricultural Land situated in any area within such distance not exceeding eight kilometers of such municipality as may be notified.

With amendment to condition (b), following categories of land shall not be considered as agricultural land:

- Land in any area measured aerially from the local limits of any municipality
  - within distance of 2 kms and having a population of more than 10,000 but not exceeding 1,00,000
  - within distance of 6 kms and having a population of more than 1,00,000 but not exceeding 10,00,000; or
  - within distance of 8 kms and having a population exceeding 10,00,000

- Revised definition of agricultural land will also be applicable for computation of net wealth under the Wealth Tax Act.

N KEYMAN INSURANCE POLICY

The sum received by assignee (assigned with or without consideration) on maturity of Keyman Insurance Policy shall be taxable.

O TAX DEDUCTED AT SOURCE

IMMOVABLE PROPERTY

- TDS @ 1% to be deducted by the buyer at the time of purchase of Immovable Property from a resident seller.

- Not applicable to:
  - Agricultural land
  - Where consideration for purchase is less than INR 50 Lacs

- If seller does not have PAN, then TDS rate would be 20%.

- This amendment will take effect from 1st June, 2013.

BORROWING IN FOREIGN CURRENCY

- Presently TDS is to be deducted @ 5% on interest paid by an Indian company to a non resident in respect of borrowing made in foreign currency under a loan agreement or long term infrastructure bond (approved by Central Government) from a source outside India.

- The benefit of 5% TDS will now be available even where such money after being converted in rupees is utilized for long term infrastructure bond.

- This amendment will take effect from 1st June, 2013.

P DEDUCTIONS

PREMIUM PAID ON LIFE INSURANCE POLICY

- Presently premium paid on life insurance policy is restricted to 10% of capital sum assured for the purpose of deduction u/s 80C.

- It is now proposed to increase the limit to 15% of the capital sum assured in respect of insurance policy issued on or after 1st April 2013 on the life of any person with disability or a person suffering from specified disease or ailment.

- **INVESTMENT UNDER EQUITY SAVINGS SCHEME**

  - Presently deduction of 50% of investment in listed equity shares under Rajiv Gandhi Equity Savings Scheme is allowed subject to limit of INR 25,000.

  - It is now proposed:

    - The benefits will also be available on investment in listed units of an EOF.

    - Deduction will be allowed for three consecutive assessment years, beginning with the year in which the listed equity shares or listed units were first acquired by the new retail investor.

    - The threshold limit of gross total income increased from INR 10 Lacs to INR 12 Lacs.

- **INTEREST ON LOAN FOR ACQUIRING RESIDENTIAL HOUSE PROPERTY**

  - Deduction of INR 1 Lac available to an individual in respect of interest payable on loan taken for acquisition of a residential house property provided:

    - the loan has been sanctioned by a specified financial institution during the period 1st April 2013 and 31st March 2014;

    - the amount of loan sanctioned does not exceed INR 25 Lacs;

    - the value of the residential house property does not exceed INR 40 Lacs;

    - individual does not own any residential property on the date of sanction of the loan.

  - If the deduction availed in A.Y. 2014-15 is less than INR 1 Lac, the balance deduction can be claimed in the subsequent year.

Q ALTERNATIVE INVESTMENT FUND

- Funds which satisfied investment and other conditions provided in SEBI (Venture Capital Fund) Regulations 1996 were granted pass through status in respect of income which arises to funds from investment in Venture Capital Undertaking under SEBI (Venture Capital Fund) Regulations 1996.

- SEBI (Alternative Investment Funds) Regulations, 2012 has replaced SEBI (Venture Capital Fund) Regulations 1996. In order to provide for benefit of pass through to similar venture capital fund registered under new regulations, following amendments have been made:

- Existing VCF and VCC which have been granted a certificate of registration will continue to have pass through status.

- In respect of funds registered under new regulations, Pass through status is available to VCF and VCC registered as Category I Alternative Investment Fund.

R TAXATION OF SECURITISATION TRUSTS

- Income of the trust from securitisation activity will be exempt, if its activities are regulated by SEBI or RBI.

- The securitisation trust will be liable to pay income tax on income distributed to its investors (distribution tax) as follows:

Category	Rate*
Individual and HUF	25%
Persons other than Individual and HUF	30%

*surcharge shall be levied @ 10% and education cess @ 3%

- No distribution tax is payable by securitisation trust, if Investor is exempt from the Indian Income tax.

- Consequent to levy of distribution tax in the hands of the securitisation trust, Income received by the investor will be exempt from tax.

- These amendments will take effect from 1st June 2013.

S TAX ON INCOME DISTRIBUTED BY MUTUAL FUNDS

- Tax on income distributed by a fund (other than money market mutual fund or liquid fund) to an individual or a HUF increased from 12.50% to 25%. Equity oriented funds continue to enjoy exemption from such tax.

- Levy of 5% tax on income distributed by a mutual fund under an Infrastructure Debt Fund scheme to a non resident or a foreign company.

- These amendments will take effect from 1st June 2013.

T GENERAL ANTI-AVOIDANCE RULE

- Applicability of GAAR provisions have been deferred to A.Y. 2016-17 instead of A.Y. 2014-15.

- Some of the important amendments are:

  - An arrangement can be declared as an impermissible avoidance agreement if the main purpose of the arrangement is to obtain tax benefit. Earlier section provided for the main purpose or one of the main purpose was to obtain tax benefit.

  - Following factors would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement.

    - period or time for which the arrangement had existed;
    - payment of taxes by the assessee, directly or indirectly; and
    - whether an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

  - An arrangement will be deemed to lack commercial substance if the transaction does not have a significant effect upon the business risks or net cash flows of any party to the arrangement except for tax benefit obtained.

- The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities (earlier binding only on Assessing Officer).

- Approving Panel shall consist of a Chairperson who is or has been a judge of a High Court, one member of the Indian Revenue Services not below the rank of Chief Commissioner of Income tax and one member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practice. Currently the Approving Panel consisted of income tax authorities and an officer of the Indian legal Service.

U TAX RESIDENCY CERTIFICATE

- It is clarified that submission of a tax residency certificate is necessary but not a sufficient condition for claiming benefits under DTAA.

V MISCELLANEOUS

- Penalty of INR 500 for every day of default is now prescribed for failure of filing Annual Information Return.

- Under the existing provision where the tax due from a private company / LLP cannot be recovered from such company / LLP, then the director / partner shall be jointly and severally liable for payment of such tax unless he proves that non recovery of tax cannot be attributable to any gross neglect, misfeasance of breach of duty on his part.

  It is clarified that "tax" includes penalty, interest or any other sum payable under the Act. This amendment will take effect from 1st June 2013.

- Under the existing provisions in relation to search, seized assets may be adjusted against any existing liability under the Income Tax Act and Wealth Tax Act. Courts have taken a view that 'existing liability' includes advance tax liability of the assessee.

It is clarified that the existing liability does not include advance tax payable. This amendment will take effect from 1st June 2013.

- Return of income shall be regarded as defective unless the tax together with interest, if any, has been paid on or before the date of furnishing of the return.

- Under the existing provision Assessing Officer could direct the assessee to get his accounts audited by an accountant and furnish a report of audit, if on account of the nature and complexities of accounts, he was of the opinion that such audit was necessary.

The power of the Assessing Officer is now widened to include in addition to "the nature and complexity of the accounts", volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee.

II CAPITAL MARKET

- SEBI to simplify the procedures and prescribe uniform registration and other norms for investment by foreign portfolio investors such as central banks, sovereign wealth funds, university funds, pension funds etc.

- Broad Principles have been laid down with regards to categorization of foreign investments in listed entities, accordingly investors holding upto 10% stake will be treated as Foreign Institutional Investment and those holding more than 10% stake will be treated as Foreign Direct Investment.

- Foreign Institutional Investors will be allowed to:

  - Participate in exchange traded currency derivative segment to the extent of their Indian rupee exposure in India.
  - Use their investments in Corporate Bonds and Government securities as collateral to meet margin requirements.

- Angel investors now recognized as Category I AIF venture capital funds.

- Small and medium enterprises, including start-up companies, will be permitted to list on the SME exchange without being required to make an initial public offer however the issue shall be restricted to informed investors.

III SERVICE TAX

A RATES OF TAX

- No change in effective tax rate of 12.36%.

B EXEMPTIONS WITHDRAWN – SERVICES LIABLE TO SERVICE TAX (EFFECTIVE FROM 1ST APRIL 2013)

- Services provided by an educational institution by way of (a) renting of immovable property and (b) auxiliary educational services (includes services relating to imparting skill, knowledge, education or development of course content for students or faculty and services relating to admission to educational institution, conduct of examination, or transportation of students, faculty or staff).

- Services by way of vehicle parking facilities to general public.

- Transfer of copyright on cinematography film except for exhibition in cinema hall/ theatre.

- Services provided to Government, local / governmental authority by way of repair or maintenance of an aircraft.

- Services provided in relation to serving of food or beverage by restaurant, eating joint or a mess with air conditioning / central heating facility and not serving liquor.

- Services by way of transportation of goods within India by rail or vessel of (a) petroleum and petroleum products (b) postal mail or mail bags and (c) household effects.

- Services by charitable trust towards 'any other object of general public utility'. Earlier services upto INR 25 Lacs per annum were exempted. However the threshold limit of INR 10 Lacs will be available.

C EXPANSION OF EXEMPTION (EFFECTIVE FROM 1ST APRIL 2013)

- Services provided by a goods transport agency by way of transport of following items will now be exempt from service tax (earlier transport by rail or vessel was only exempt):
  - Chemical fertilizers and oil cakes
  - Newspapers and specified magazines
  - Relief materials meant for victims of natural or man-made disasters
  - Defense or military equipments
  - Agriculture produce and food stuff excluding alcoholic beverages (Earlier fruits, vegetables, egg, milk, food grains or pulses were specifically exempted)

D AMENDMENT IN ABATEMENT RATES (EFFECTIVE 1ST MARCH 2013)

- Abatement has been reduced from 75% to 70% in respect of (a) construction of residential unit having carpet area exceeding 2,000 square feet and where the amount charged is INR 1 crore and above and (b) all commercial units. Effective tax rate will be 3.708% as against 3.09% earlier.

E EXPANSION/CHANGES TO NEGATIVE LIST (W.E.F. ENACTMENT OF BILL)

- Vocational courses offered by institutes affiliated to the State Council (earlier this was restricted to National Council) of Vocational Training are non-taxable. However, courses provided by National Skill Development Corporation will now be taxable.

- All testing services relating to agriculture or agriculture produce are not taxable. Earlier only seed testing was non-taxable.

- Processes on which duty of excise is leviable under the Medicinal & Toilet Preparation (Excise Duties) Act, 1955 will not be taxable.

F PROPOSED "SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013" (W.E.F. ENACTMENT OF BILL)

- The proposed scheme is a one-time measure to broaden the tax base and to encourage voluntary compliance by persons who has either not filed the returns or not disclosed the taxable service in Returns filed. The service tax not paid should be for the period 1st October 2007 to 31st December 2012 and tax should have remained unpaid as on 1st March 2013.

- The key points of the proposed scheme are given below:
  - The scheme can be availed by any person by declaring the tax dues.
  - Under the scheme declarations in respect of the following are not eligible:
    - If as on 1st March 2013 inquiry, investigation and/or audit is pending
    - Returns truthfully filed but service tax liability is not discharged
    - Service tax on matters for subsequent period if notice/ order has been issued in respect of such matters for earlier period.
  - No interest or penalty is payable if liability is discharged as under:
    - Minimum 50% of tax liability is paid on or before 31st December 2013.
    - Balance liability upto 30th June 2014.
  - With interest if Balance liability is paid prior to 31st December 2014
- If dues are not paid either fully or in part as per the scheme, they shall be recovered along with interest as per normal provisions.
- The department can take action within one year (from the date of declaration) for false declaration.
- The form and manner of declaration, acknowledgement, discharge of tax dues, etc. would be prescribed by way of Rules.

G ADVANCE RULING AUTHORITY

- The benefit of advance ruling authority is being extended to resident public limited companies.

H OTHERS PROCEDURAL RELATED (W.E.F. ENACTMENT OF BILL)

- In case the show cause notice is not found sustainable (i.e. the charge of fraud, collusion etc is not established) then central excise officer shall determine the service tax payable for the period of eighteen months as if the notice was issued for the offence for which limitation of eighteen month applies.

- Offences and Penalties

Nature of default	Earlier	Amended
Failure to obtain service tax registration.	Penalty of INR 200 for every day of default or INR 10,000 whichever is higher.	Penalty amount is restricted upto INR 10,000.
Default by Director, Manager, etc of the company who has committed any contraventions like evasion of tax, issuance of invoice, availment and utilization of credit, failure to pay tax collected beyond six months.	Earlier there was no such liability on Director, Manager, etc of the company.	Liability of INR 1 Lac on Director, Manager etc of the company.
Where the offence of service tax collected but not paid exceeds INR 50 Lacs.	Punishment term was upto 3 years and minimum 6 months subject to condition.	Punishment shall be imprisonment for a term which may extend to 7 years but shall not in any case be less than 6 months.

IV GLOSSARY

Act	Income-tax Act, 1961
AIF	Alternative Investment Fund
AIR	Annual Information Return
AMT	Alternate Minimum Tax
AO	Assessing Officer
A.Y.	Assessment Year
CBDT	Central Board of Direct Taxes
CGHS	Central Government Health Scheme
CTT	Commodities Transactions Tax
DDT	Dividend Distribution Tax
DTAA	Double Tax Avoidance Agreement
EOF	Equity Oriented Fund
EPF & MP Act	Employees' Provident Fund & Miscellaneous Provisions Act,194
FTS	Fees for technical services
F.Y.	Financial Year
GAAR	General Anti-Avoidance Rules
HUF	Hindu Undivided Family
IDF	Infrastructure Debt Fund
INR	Indian National Rupee
IPF	Investor Protection Fund
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
NBFC	Non Banking Financial Corporation
NHFCL	National Financial Holding Company Limited
PAN	Permanent Account Number
RBI	Reserve bank of India
RGESS	Rajiv Gandhi Equity Linked Saving Scheme
SDV	Stamp Duty Value
SEBI	Securities Exchange Board of India

SME	Small and Medium Enterprises
STT	Securities Transaction Tax
TDS	Tax Deducted at Source
TRC	Tax Residency Certificate
VCC	Venture Capital Company
VCF	Venture Capital Fund
VCU	Venture Capital Undertaking

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