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UNION BUDGET 2012-2013 - HIGHLIGHTS

The Honorable Finance Minister of India, Mr. Pranab Mukherjee, delivered the Union Budget 2012-2013 – his fourth in the second consecutive term of the UPA Government, and probably the one with unprecedented pressure - on the 16th March 2012, and thereafter presented the Finance Bill, 2012 before the Parliament.

Accordingly, like every year, we have hereby attempted to elucidate and analyze the major and important amendments proposed in the Direct Tax and Service Tax Laws, with their implications; and are sure that the same would be handy to you.

As of date, these are proposals only and if adopted by the Parliament and passed as Finance Act; will come into force for and from Assessment Year 2013-2014 relevant to Financial Year 2012-13, unless specifically provided otherwise.

It is said that 'the devil is in the detail' and one can quote the fine print of this Budget to exemplify that axiom. The Finance Minister has spoken all the good words in his Budget Speech and has gone on a spree for proposing retrospective amendments and other provisions, which can have far reaching impacts on businesses, and take the Government on the brink of losing its trustworthiness for the business world.

I. DIRECT TAXES

Amendments proposed under the Income-tax Act, 1961 (hereafter referred to as "the Act") and Wealth-tax Act, 1957 (specifically referred wherever applicable)

1. New Direct Tax Code ('DTC')

In his Budget three years ago, the Finance Minister announced the introduction of the New Direct Taxes Code ('DTC') and a draft of the same was also circulated for comments and discussion. Thereafter, based on the inputs from various lobbies; the revised draft was constructed and the DTC Bill was introduced in the Parliament in August 2010.

Since last two years, the Finance Minister has been communicating its introduction from the ensuing financial year, but the same has not been happening. The result is the same even in this year. However, the Report of the Parliamentary Standing Committee on the DTC has been submitted and therefore the chances are very bright that the DTC may come into effect from the next year i.e. Assessment Year 2014-15 relevant to Financial Year 2013-14.

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2. **Rates of Taxes, Basic Exemption Limit and Income Slabs**

The rates of **Basic Tax, Education Cess and Higher Secondary Education Cess** have been kept **unaltered for all assessees**.

Basic Exemption Limits and tax slabs

The **Income Slabs** limit for Individual Hindu Undivided Family ('HUF'), Association of Persons ('AOP') and Body of Individuals ('BOI') **have been further increased, the features of which are** as under:

1. Basic Exemption Limit of the general category proposed to be raised from Rs.1,80,000/- to Rs.2,00,000/-.

2. However, the additional Rs.10,000/- Basic Exemption Limit which is allowed to woman upto 60 years (i.e.Rs.1,90,000/- as against Rs.1,80,000/-) is proposed to be withdrawn. Accordingly, their Basic Exemption Limit would also be Rs.2,00,000/- along with the general category.

3. The Basic Exemption Limit of 'senior citizens' (60 years and above till 80 years) and 'very senior citizens' (80 years and above) to continue at the same level of Rs.2,50,000/- and Rs.5,00,000/- respectively.

4. The upper limit for the income slab liable to tax at 20% increased from the existing Rs.8,00,000/- to Rs.10,00,000/-.

5. The new income slabs and tax rates applicable to Individuals, HUF, AOP and BOI would accordingly be as under:

Assessee	**Existing basic exemption and Income Slabs**		**Proposed basic exemption and Income Slabs**	
	Total Income	*Tax Rate*	*Total Income*	*Tax Rate*
All Individuals, HUF, AOP and BOI (except those stated below)	**upto** Rs.1,80,000/-	Nil	**upto** Rs.2,00,000/-	Nil
	Rs.1,80,001/- to **Rs.5,00,000/-**	10% of income above Rs.1,80,000/-	Rs.2,00,001/- to **Rs.5,00,000/-**	10% of income above Rs.2,00,000/-
	Rs.5,00,001/- to **Rs.8,00,000/-**	Rs.32,000/- plus 20% of income above Rs.5,00,000/-	Rs.5,00,001/- to **Rs.10,00,000/-**	Rs.30,000/- plus 20% of income above Rs.5,00,000/-
	Above Rs.8,00,000/-	Rs.92,000/- plus 30% of income above Rs.8,00,000/-	**Above** Rs.10,00,000/-	Rs.1,30,000/- plus 30% of income above Rs.10,00,000/-
*Individuals, being **resident woman**, upto the age of 60 years*	**upto** Rs.1,90,000/-	Nil	**upto** Rs.2,00,000/-	Nil
	Rs.1,90,001/- to **Rs.5,00,000/-**	10% of income above Rs.1,90,000/-	Rs.2,00,001/- to **Rs.5,00,000/-**	10% of income above Rs.2,00,000/-

	Rs.5,00,001/- to **Rs.8,00,000/-**	Rs.31,000/- plus 20% of income above Rs.5,00,000/-	Rs.5,00,001/- to **Rs.10,00,000/-**	Rs.30,000/- plus 20% of income above Rs.5,00,000/-
	Above Rs.8,00,000/-	Rs.91,000/- plus 30% of income above Rs.8,00,000/-	**Above** Rs.10,00,000/-	Rs.1,30,000/- plus 30% of income above Rs.10,00,000/-
Individuals, being resident, and 'Senior Citizen' (i.e. above 60 years) upto the age of 80 years	**upto** Rs.2,50,000/-	Nil	**upto** Rs.2,50,000/-	Nil
	Rs.2,50,001/- to **Rs.5,00,000/-**	10% of income above Rs.2,50,000/-	Rs.2,50,001/- to **Rs.5,00,000/-**	10% of income above Rs.2,50,000/-
	Rs.5,00,001/- to **Rs.8,00,000/-**	Rs.25,000/- plus 20% of income above Rs.5,00,000/-	Rs.5,00,001/- to **Rs.10,00,000/-**	Rs.25,000/- plus 20% of income above Rs.5,00,000/-
	Above Rs.8,00,000/-	Rs.85,000/- plus 30% of income above Rs.8,00,000/-	**Above** Rs.10,00,000/-	Rs.1,25,000/- plus 30% of income above Rs.10,00,000/-
Individuals, being resident, and ' Very Senior Citizen' i.e. of age 80 years and above	**upto** Rs.5,00,000/-	Nil	**upto** Rs.5,00,000/-	Nil
	Rs.5,00,001/- to **Rs.8,00,000/-**	20% of income above Rs.5,00,000/-	Rs.5,00,001/- to **Rs.10,00,000/-**	20% of income above Rs.5,00,000/-
	Above Rs.8,00,000/-	Rs.60,000/- plus 30% of income above Rs.8,00,000/-	**Above** Rs.10,00,000/-	Rs.1,00,000/- plus 30% of income above Rs.10,00,000/-

3. Effective from 1st July 2012, **Securities Transaction Tax** is proposed to be reduced from 0.125% to 0.01% on delivery transactions of equity shares and units of equity oriented fund, conducted through stock exchange.

4. Attacking the Supreme Court's decision in Vodafone's case

Anyone of us would hardly be unaware of the recent decision of the Honourable Supreme Court of our country in the case of Vodafone, whereby it was held – in a layman's language - that transfer of shares of a foreign company by one non-resident to another would not be taxable in India, even if such transfer results into change of effective ownership of assets held through such foreign company in India; unless it is proved that the same was done with a motive of tax avoidance. The tax amount involved in that case was - again as most of us would be aware - to the tune of about Rs.12000 crores.

Given the current global situation and the consequential challenges and slowdown faced in India, it was not expected that the Finance Minister, in this year atleast - would do any tinkering to bring within the tax fold such situations, and at the least, won't do it retrospectively.

However, against all odds, he has dared to bring in the following **retrospective amendments effective from 1962** i.e. from the time the existing tax law got enacted, to bring Vodafone's and other similar transactions within tax net:

a. Proposing to amend section 2(14) which defines 'capital asset', so as to include within its fold any rights in or in relation to an Indian company including rights of management or control;

b. Proposing to amend section 2(47) which defines 'transfer' so as to include therein, inter alia, the direct or indirect disposal of or parting with an asset or interest therein by way of an agreement outside India, notwithstanding that such transfer is effected or dependent upon or flowing from transfer of shares of a foreign company.

c. Proposing to amend section 9(1)(i) which provides, inter alia, that any income of a non-resident *through* an asset situated in India shall be taxable in India; so as to further provide that:

    i. '*through*' as appearing in the provision shall be deemed to mean and include 'by means of', in consequence of' or 'by reason of'; and

    ii. any asset being shares or interest in a foreign company shall be deemed to be situated in India if such shares/interest derives, directly or indirectly, its value substantially from assets located in India.

To many, these retrospective amendments would not be a healthy sign as they portray to the foreign investors - who are already dealing with huge tax litigations – even the Government's involvement to keep the country's tax regime uncertain, by going to the extent of retrospectively undoing even the apex judiciary's decisions to suit its needs.

On the other hand, there could also be an argument that India's recent growth due to high foreign interest was sudden and unprecedented, taking it to the next stage of developmental process; and at the previous stage, it was not equipped with laws and regulations to avoid such ways of tax planning whereby business interests on its land gets transferred tax-free, which could never have been its intention! Hence, to set this right, retrospective steps are required.

This debate can really go on endlessly, and we leave it for you to form your own opinion thereon. In our humble opinion, whether a retrospective amendment is good for the country or not, has to be decided on a case to case basis, and in the context of Vodafone, we would go with Finance Minister, though we understand that Vodafone has become the scapegoat for the income earned by Hutchison (on which the Indian authorities have no jurisdiction).

5. You bought software and didn't deduct tax, you won before the judiciary, but now you lose retrospectively!

As you would be aware, a huge spate of litigation between Revenue and assessees has been that whether the consideration paid for off-the-shelf licensed software amounts to 'royalty'; and in almost all cases, the assessees won.

Now, the Finance Minister has proposed retrospective amendments –effective from June 1976 – to section 9(1)(vi) concerning taxation of 'royalty', so as to provide that such consideration would be 'royalty'!

It is also proposed to bring in retrospective amendment to provide that the consideration in respect of right, property or information, which is covered as 'royalty', shall be so covered whether or not; the possession or control thereof is with the payer, or it is directly used by the payer, or its location is in India; which is again meant to undo certain judiciary decisions.

With respect to these retrospective amendments, we would go anti-FM and strongly urge him to roll back these proposals and bring it prospectively, if at all, as lakhs of assessees would not only be unnecessarily and unfairly put to litigation, but also have to shell out monies from their pockets on account of TDS defaults getting triggered by such these amendment (as many such software are bought from non-resident entities, on most of whom the Indian tax authorities do not have jurisdictions and therefore, they would go after Indian assessees claiming TDS defaults).

6. General Anti Avoidance Rules ('GAAR')

In Marathi language, 'gaar' means 'chilled'. The GAAR that the FM has proposed (through Chapter X-A) to would also send the 'chill' through the spine of businessmen, as these extensive provisions - applicable to all assessees, whether international or domestic – would virtually take within its fold every transaction where there could be a possibility of higher tax than what is actually paid. And worse, the tax officials have nothing to do except initiating GAAR proceedings and everything would be deemed against assessees unless proved otherwise by them.

The only silver-lining is that the GAAR shall be applied in accordance with such guidelines and subject to such conditions and manner as may be prescribed. So let's hope that the better sense would prevail in prescribing such conditions and guidelines.

Detailed procedures for assessments applying GAAR have been proposed, whereby the Assessing Officer would seek the Commissioner's approval and if the Commissioner is also satisfied about its applicability, then he would refer the same to the Approving Panel (to consist of not less than 3 members of the rank of Commissioner and above), which would issue its directions thereon. Appeal and related procedures in this connection are also proposed through amendments to various sections.

In a nutshell, these teething provisions are going to be a dangling sword on assessees and create a mammoth litigation, unless they are judiciously administered.

7. Tax-breaks in respect of Life Insurance Policies allowable only if yearly premium not more than 10% of sum assured, as against existing 20%

Section 10(10D) provides exemption of the amount received under any life insurance policy provided that the premium on such policy for year during its term does not exceed 20% of the sum assured.

Section 80C provides for deduction of Insurance Premium paid, subject to maximum of 20% of the sum assured.

This limit of 20% in both the aforesaid sections, is now proposed to be reduced to 10% for policies issued after 31st March 2012, that is to say, in respect of policies issued after that date, the deduction u/s.80C shall be restricted to actual premium paid, subject to 10% of sum assured; and if any of the years' premium exceeds 10% of the sum assured, then the maturity amount shall be taxable.

8. Deduction of 50% to new retail investors with annual income below Rs.10 lacs, investing in equities upto Rs.50,000/-

It is proposed to introduce a scheme to be called Rajiv Gandhi Equity Savings Scheme, wherein a deduction of 50% would be allowed to new retail investors investing upto Rs. 50,000/- directly in equities, and whose annual income is below Rs.10 lacs, with a lock-in period of 3 years.

It may be noted that the above has been mentioned by the Finance Minister in his Budget Speech, wherein he also stated that the details of the scheme would be announced in due course. Accordingly, there is no proposed amendment included in the Finance Bill to allow the above said deduction as of now.

9. Removal of restricted business list for exemption to Venture Capital Fund/Company

Section 10(23FB) provides for exemption of income of a Venture Capital Fund/Company from investments in a Venture Capital Undertaking ('VCU').

However, VCU was defined to be an unlisted company engaged only in certain specified businesses.

It has now been proposed to modify the definition of VCU so as to do away with such restriction of only specified businesses i.e. a VCU can now be in any business, subject to fulfillment of other conditions as may be prescribed by SEBI (Venture Capital Funds) Regulations, 1996.

10. Exemption to foreign company of income from sale of crude oil in Indian currency to resident under approved/notified arrangement

It is proposed to insert section 10(48) to allow exemption to a foreign company, of income received in Indian currency, on account of sale of crude oil to any person in India, under an agreement/arrangement entered into by/approved by and notified by the Central Government, provided that such foreign company is not engaged in any other activity in India.

11. Additional depreciation on plant and machinery to power industry

Section 32(1) (iia) allows an additional depreciation of 25% on plant and machinery acquired and installed by an assessee engaged in the business of manufacture of article or thing.

Such additional depreciation is now proposed to be allowed to assessee engaged in the business of generation or generation and distribution of power.

12. Extension of period of weighted deduction on approved in-house scientific research expenditure to bio-tech and manufacturing industry, by 5 years

Section 35(2AB) allows weighted deduction of two times of the expenditure incurred on scientific research on in-house research and development facility as approved, to a company engaged in the business of bio-technology or manufacture of artcle or thing (barring certain items).

The sun-set provision for such weighted deduction is proposed to be extended from 31st March 2012 to 31st March 2017.

13. Extending the benefits of 100% deduction of capital expenditure to certain businesses and allowing weighted deduction thereof to certain specified businesses

Section 35AD allows deduction of capital expenditure incurred wholly and exclusively for certain specified businesses, subject to fulfillment of other conditions prescribed therein.

For the following of the specified businesses, it is proposed to allow deduction of 150% of the capital expenditure *incurred after 31st March 2012*:

a. Setting up and operating cold chain facility;
b. Setting up and operating warehousing facility for agricultural produce;
c. Building and operating in India, a hospital with atleast 100 beds;
d. Developing and building a housing project under notified Government's affordable housing schemes;
e. Production of fertilizers in India

It is also proposed to extend the benefits of deduction of capital expenditure (100%) to the following businesses also, *commencing its operations after 31st March 2012*:

a. Setting up and operating approved/notified inland container depot/freight station;
b. Bee-keeping and production of honey and beeswax;
c. Setting up and operating a warehousing facility for storage of sugar.

14. Weighted deduction for expenditure on notified agricultural extension project/skill development project

Section 35CCC is proposed to be inserted so as to allow 150% deduction of any expenditure incurred by *any assessee* on notified agricultural extension project.

Similarly, section 35CCD is proposed to be inserted so as to allow 150% deduction of any expenditure incurred by *a company* on notified skill development project.

15. Highly welcoming provisions relating to rationalization of Tax Deduction at Source ('TDS') and Tax Collection at Source ('TCS') provisions

Section 40 (a) (ia) provides that where TDS has not been done/paid within prescribed time on any expenditure payable/paid to a resident, then the same shall not be allowed as deduction.

Section 201provides for consequences, inter alia, of failure to deduct tax at source; whereby the person who failed to deduct is deemed to be assessee in default, and the tax not deducted is recovered along with interest.

It is now provided that if following conditions are fulfilled, then such person who failed to deduct tax at source shall not be deemed to be assessee in default (i.e. the said tax would not be recovered from him/it) and the corresponding expenditure shall also not be disallowed in his/its case u/s.40 (a) (ia):

a. The resident person on whose income the TDS was not done has filed his/its return;
b. He/it has taken into account such income in such return filed and paid the tax due thereon;
c. He/it furnishes an accountant's certificate to the above effect in prescribed form

Though there have been judiciary decisions to the above effect as far as TDS default proceedings are concerned, including the same in the Statute has removed subjectivity and brought in clarity and fairness.

Also, the withdrawal of disallowance u/s.40 (a) (ia) in respect of such expenditure, which was not within judiciary's jurisdiction, is highly welcoming.

Similar provisions are also proposed to be inserted in respect of TCS.

16. Expansion of definition of 'related parties' for domestic transactions

Section 40A (2) (a) provides for disallowance of expenditure/part of expenditure payable/paid to 'related party' in *domestic transactions*, considered by the as excess or unreasonable having regard to the fair market value thereof.

Section 40A (2) (b) provides for relations which shall be considered as 'related parties' for the above purpose.

One such relation under above provisions is of a company, firm, AOP or HUF having substantial interest (more than 20%) in the business/profession of the concerned assessee or any director/partner/member of such company, firm, AOP or HUF, or any relative of such director/partner/member.

It is now proposed to also include a company in which the above mentioned company (which has substantial interest in assessee) has substantial interest.

While this amendment has not be appropriately worded, it does not include cases where a person other than a company viz. firm, AOP or HUF has substantial interest in another company or any other entity.

Also, the provisions of this section shall not apply to cases where the aggregate amount to 'related party' is Rs.5 crores or more, for which the transfer pricing provisions are proposed to be made applicable.

17. Increase in limits for requirement of Tax Audits

Section 44AB provides for mandatory tax audit for businesses with sales/turnover exceeding Rs.60 lacs and professionals with gross receipts exceeding 15 lacs.

It is now proposed to enhance these limits from Rs.60 lacs to Rs.1 crore and Rs.15 lacs to Rs.25 lacs respectively.

A further amendment is also proposed therein to rationalize the due date of submitting the Tax Audit Report by linking the same to due date of filing return, as against the current 30th September of the Assessment Year (as the same creates issues when the due date of filing return is different from that date, especially for TP cases the due date of filing return whereof is 30th November).

18. Section 44AD provides for **presumptive taxation for businesses** with turnover below the tax audit threshold amount.

With increase the threshold limits of tax audit requirements, corresponding amendments are also proposed to be made therein.

It is also proposed to be provided therein, effective from 1st April 2011, that the provisions of presumptive tax shall not apply to persons carrying on profession (and not business), or carrying agency business/earning commission or brokerage.

19. Sale value where consideration not ascertainable/determinable

Section 50D is proposed to be inserted to provide that where the consideration receivd or accruing on transfer of capital asset is not ascertainable or cannot be determined, then the fair market value of the said asset on the date of transfer shall be considered as its sale consideration, for the purpose of computing capital gains.

While this amendment is also proposed to undo certain judiciary decisions holding that capital gains cannot be taxed in such scenario, the good thing here is that this proposal is prospective.

20. Exemption of long term capital gains on transfer of residential property if invested in plant machinery through small/medium enterprise, for 5 years

Section 54 GA is proposed to be inserted so as to provide exemption of long term capital gains arising to *individuals and HUFs* from transfer of residential property (house or a plot of land) *between 1st April 2012 and 31st March 2017*, proportionate to the sale consideration thereof invested in a newly incorporated Indian company (to be owned atleast 50% by the concerned assessee, and engage in the business of manufacture and covered as small or medium business enterprise under Micro, Small and Medium Enterprises Act, 2006) from which such company purchases new plant or machinery; subject to fulfillment of the other conditions as prescribed therein.

21. Private companies receiving share issue proceeds above fair market value from resident taxable

Section 56(viib) is proposed to be inserted so as to tax as 'Income from Other Sources' any amount received by a company (not being a company in which public are substantially interested) from a *resident* person, as consideration for issue of shares that exceeds the face value thereof, unless such consideration is equal to or less than the fair market value of such shares.

The provisions therefore, would not apply to any such amount received in excess of the fair market value from a non-resident.

These provisions would also not be applicable to consideration for issue of shares received by a Venture Capital Undertaking from Venture Capital Fund/Company.

The fair market value of shares for this purpose shall be higher of the value as may be determined in accordance with prescribed method, or as may be substantiated by the assessee o the satisfaction of the Assessing Officer.

22. Share Application Money, share capital, share premium etc. of private companies to be considered as unexplained cash credit in certain situations

Section 68 provides that where any sum is found credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered is not found satisfactory by the Assessing Officer, then such amount would be added to the income of the assessee.

It is now proposed that where any company (not being a company in which public are substantially interested), any amount credited as share application, share capital, share premium or *any such amount by whatever name called*, then any explanation offered shall not be deemed to be satisfactory unless the *resident* person in whose name the entry is made also offers explanation about the nature and source of such amount and the Assessing Officer finds such explanation satisfactory.

Well, it is not clear what is meant by '*any such amount by whatever name called*' as italicized above. Does it mean any amount related to shares of the company or any other credit also? In our view, the former should hold. Also, the mention of '*resident*' (again italicized) above would mean that the provisions do not apply to any amount received from non-resident!

23. **Section 80D** which allows deduction in respect of health insurance premium, is proposed to be amended so as to allow a **further deduction of upto Rs.5,000/-** incurred (whether by cash or otherwise) on **preventive health check up of the parent(s)** of the assessee.

    The age limits for senior citizens in section 80D and 80DDB (deduction on expenditure incurred for medical treatment of prescribed diseases) are proposed to be brought down from 65 years to 60 years, in line with other provisions of the Act.

24. **Deduction of donations above Rs.10,000/- allowable only if paid by any mode other than cash**

    Section 80G allows deduction in respect of donations made to specified/approved trusts/institutions etc. Section 80GGA allows deduction in respect of donations for scientific research or rural development.

    It is proposed to amend these sections to allow deductions in respect of such donations exceeding Rs.10,000/- only if the same is paid by any mode other than cash.

25. **Extension of sunset clause for tax benefits to power sector**

    Section 80IA provides for deduction of 100% of the profits and gains from various businesses specified therein, subject to fulfillment of other conditions prescribed.

    The said section allows such deduction, inter alia, to the undertakings set up for generation/distribution/transmission of power before 31st March 2012.

It is now proposed to extend the benefit of this deduction to such undertakings set up before 31st March 2013.

26. **Interest income upto Rs. 10,000/- of Individuals/HUFs from Savings Account with Bank/Post Office not taxable**

    Section 80TTA is proposed to be inserted so as to allow deduction upto Rs.10,000/-, to individuals and HUFs, in respect of interest on savings bank account with banks (including co-operative banks) or post office.

27. **Amendments relating to DTAA provisions**

    Section 90 (2) provides that in case of a person resident in any country with which India has a Double Tax Avoidance Agreement ('DTAA'), the more beneficial provisions between such DTAA and the Act shall apply.

    It is proposed that the GAAR will override the DTAA provisions, even if they are not more beneficial than the DTAA.

    Moreover, it is also proposed that the benefit of the DTAA shall not be allowed to any non-resident unless he/it provides a certificate from the government of the country of its/his residence of he/it being resident of that country.

Section 90(3) provides that where certain term is not defined either in the DTAA or the Act, then the same shall have the meaning assigned to it by notification issued in that respect.

It is now proposed to provide, effective from 1st October 2009, that when such notification assigning meaning to any term is issued, then the same shall be effective in interpreting the DTAA, from the date such DTAA became effective.

Similar amendments are also proposed in section 90A containing provisions of adoption by Central Government of agreement between specified associations for double tax relief.

28. Far reaching amendments to Transfer Pricing provisions

The following amendments are proposed to the Transfer Pricing provisions, which would have far reaching implications, not only on cross-border transactions between Associated Enterprises, but also on large value transactions between domestic related parties:

i. Effective from 1st July 2012, transactions between domestic related parties (as defined in section 40A(2)(b)) exceeding Rs. 5 crores in aggregate in respect of an assessee, to come within transfer pricing net; which would include maintaining of prescribed documents and information and separate transfer pricing assessment by Transfer Pricing Officers. So be prepared on an additional area of huge litigation in respect of your domestic related party pricing, since this area is very subjective and has recently been the cash-cow for government in cross-border transactions;

ii. Definition of ‘international transactions’ to be expanded so as to specifically include therein business restructuring, financing and guarantee arrangements etc., retrospectively from April 2002;

iii. Extensive definition of ‘intangible property’ to include all types of rights, licenses etc. within its fold, again retrospectively from April 2002;

iv. Section 92C(2) to be amended retrospectively for cases pending before Assessing Officer as on 1st October 2009, so as to undo judicial decisions favoring the assessees with respect to allowing +-5% adjustment to mean comparable price, for determining arm’s length price; however, cases completed before 1st October 2009 cannot be reopened;

v. Arm's length range to be restricted to 3% of the actual price undertaken, with effect from 1 April 2013;

vi. Retrospective amendment effective from 1st June 2002 to empower TPO to examine international transactions not reported in Form 3CEB, which comes to his notice in the course of transfer pricing proceedings; however, cases completed before 1st July 2012 not to be reopened;

vii. Extensive provisions for Advance Pricing Agreements to be introduced with effect from 1st July 2012, but these would be person-based agreement to be entered by the assessee and the CBDT, and would be applicable only in such assessee’s case, for agreed transactions;

viii. Non-furnishing of prescribed report in Form 3CEB to be deemed case of income having escaped tax for initiating income-escaping assessments (reassessments);

ix. Penalty of 2% of transaction value in cases where certain transaction/s not reported in prescribed Form 3CEB and maintenance/furnishing of incorrect information or document as prescribed;

x. Penalty for non-filing of Form 3CEB to be increased from Rs. 1 Lac to 2% of the value of international transactions;

29. Section 115A providing **concessional tax rates in certain incomes of non-residents**, is proposed to be amended so as to provide concessional tax rate of 5% to non-residents on income by way of interest on loans borrowed in foreign currency between 1st July 2012 and 30th June 2015 under approved agreements, by Indian companies engaged in specified business.

Section 194 LC proposed to be inserted providing for tax deduction at source on such interest payable/paid by the Indian Company.

30. Section 115BBA providing for **concessional tax rate of 10% to sportsmen and sports association** proposed to be amended to **increase the tax rate to 20%.**

The said section is also proposed to be amended so as to **provide benefit of concessional tax rate of 20% to non-Indian citizen non-resident entertainer** for income from his performance in India;

Section 194E proposed to be amended to provide for tax deduction at source by the payer of the aforesaid income.

31. One year's extension for concessional rate of taxation to Indian companies on dividend from foreign companies with holding of atleast 26%

Section 115BBD provides for concessional rate of tax at 15% on dividend income of by Indian companies from foreign companies in which they hold atleast 26% equity stake, for Assessment Year 2012-13.

It is proposed to extend this benefit for Assessment 2013-14 also.

32. Section 115BBE proposed to be inserted to **tax additions on account of unexplained cash credit/money/expenditure/ investments/ amount borrowed/repaid on hundi, at flat rate of 30%** (i.e. without applying the slab rates, where applicable), and no deduction whatsoever shall be allowed against the same.

33. Section 115JB is proposed to be amended so as to include in 'book profits' the amount standing to the revaluation reserve in respect of assets disposed off, even if the same is not credited to the Profit & Loss Account.

34. MAT on companies, AMT on LLP, now AMT on other persons too fulfilling specified conditions

Last year, through introduction of Chapter XII-BA containing sections 115JC through 115JF, Limited Liability Partnership ('LLP') were made liable to minimum tax called Alternate Minimum Tax ('AMT').

The provisions made an LLP liable to pay tax @ 18.5% (plus Education Cess) on its total income (as computed under the provisions of the Act itself) before deductions u/s.80 (in respect incomes from specified businesses/sources) and u/s.10AA (profits of SEZ units); in case where such amount exceeds the regular tax on its total income after such deductions.

Provisions for carry forward and set-off of AMT credit for a 10-year period are also available.

These provisions are now proposed to be made applicable to other persons also, who or which claims deduction u/s. 80 (in respect incomes from specified businesses/sources) and/or section10AA (profits of

SEZ units); and in cases of individuals, HUFs, AOPs, BOIs and artificial juridical persons claiming such deduction/s, only where the adjusted total income (i.e. income before such deductions) is Rs.20 lacs or more.

We strongly suggest that rather than having such backdoor taxation on all assessees claiming deduction u/s.80 and 10AA, which increases administration and litigation; it would make sense to tax such incomes under the normal provisions itself at concessional rates.

35. Removal of cascading effect of Dividend Distribution Tax ('DDT')

Section 115O providing for DDT, allows credit in respect of the dividend received by the dividend paying company from its subsidiary, provided the dividend distributing company itself is not a subsidiary of any other company. This restricts such benefit only to holding companies.

It is now proposed to do away with this provision and provide credit of dividend received from a subsidiary, irrespective of whether or not the dividend distributing company is itself a subsidiary of another company.

36. Section 115U provides for **taxation of income of the investors of Venture Capital Fund/Company**, in the same manner as if it were income received by such investors had the directly invested in the Venture Capital Undertaking.

It is now proposed to bring in amendments therein so as to include such income in investors' hands in the year they accrue or arise, irrespective of whether or not the same is credited to their accounts in the books of the Venture Capital Fund/Company.

37. Chapter XII-G containing special provisions of **tonnage tax** relating to income of shipping company is proposed to be amended so as to increase the rates of such tax by about 50% of the existing rates.

38. Section 139 providing for **filing of returns** is proposed to be amended so as to require compulsory filing of return of income by a resident person, who, though not required to file a return under other provisions, has **any asset** (including financial interest in any entity) **located outside India** or any signing authority in any account located outside India.

39. Section 144C providing for the Dispute Resolution Panel ('DRP') proceedings, have been interpreted by the judiciary to **bar the DRP from considering any new issue not forming part of the draft order**.

A **retrospective amendment** effective from Assessment Year 2009-10 is proposed to **undo such decisions** and have the DRP consider new issues also in the proceedings before it, even if they are not part of the draft order.

40. Section 147 containing provisions income-escaping assessments (commonly called as 'reassessments') are proposed to be amended so as to allow **a window of 16 years for cases involving escapement of income in relation to any asset** (including financial interest in any entity) **located outside India** (as against maximum of 6 years for other cases).

Further, in cases of income escaping assessments on Indian agents of non-residents, the current time limit of issuing notice within 2 years from the Assessment Year is proposed to be extended to 6 years.

It is also proposed to be provided that these amendments would also apply to years before 2012.

Similar provisions are proposed under the Wealth-tax Act, 1957.

41. Few years ago, the **time limits for completion of assessments/reassessments** were preponed by 3 months to December of the previous calendar year, so that the collection of demands can be made by the time the budget is to be presented in the ensuing February.

Amendments are now proposed to various sections to make the time barring period back to ensuing March i.e. as it was before the existing provisions of pre-ponement were brought in.

Similar provisions are proposed under the Wealth-tax Act, 1957.

Lot of to and fro, huh!

42. Extension of time limits for completion of assessments in cases of exchange of information

Section 153 provides for time limits for completion of assessments/reassessments. Section 153B of the Act provides for completion of assessment in cases of search/requisition.

The said sections also provide for exclusion of certain periods in determining the time-barring dates of completion of assessments/reassessments.

Effective from 1st June 2011, it also excluded in determining such time barring period of completion of assessments/reassessments, the time taken to obtain any information from foreign tax authorities under tax avoidance or information exchange agreements, subject to a maximum of 6 months.

The said maximum period of 6 months is now proposed to be made to 1 year.

It is also proposed to exclude the period of GAAR proceedings for determining the time-barring dates of completion of assessments/reassessments.

It is also proposed to extend the time barring period by 1 year than the normal time-barring period, in cases of/relating to search where the transfer pricing proceedings are also involved.

43. Section 193 providing for TDS on interest on Securities is proposed to be amended to allow **exemption from TDS from interest on debentures upto Rs.5,000/- payable by way of account payee cheque** by companies in which public are substantially interested to individuals and HUFs.

44. TDS on certain items of income

Section 194J, providing for TDS on professional/technical fee is proposed to be amended to now provide **TDS @10% on director's fees/commission/remuneration, which is not taxable as salary**, effective 1st July 2012.

This could also be interpreted to mean that TDS on such income was not required to be done hitherto, though that would be stretching it a bit far. In our opinion, the same is to be considered on a case to case basis having regard to the facts thereof.

Section 194LA provides for **TDS on payment of compensation of certain immoveable property** under compulsory acquisition, of Rs.1 lac or more.

The said limit of Rs.1 lac is proposed to be increased to Rs.2 lacs.

Section 194LAA is proposed to be inserted to provide for **TDS at the rate of 1% by the purchaser of immoveable property** (land or building, other than agricultural land) from **the consideration payable to a**

resident seller thereof, where such consideration is Rs.50 lacs/Rs.20 lacs or more depending on the location of the immoveable property. There are other related provisions including no registration of such property being carried out unless the challan of TDS is produced before the registering authority. This would be effective from 1st October 2012.

45. Section 201 relating to the consequences of failure to deduct/pay tax at source is proposed to be amended so as to extend the time limit for passage of order therein, from 2 years to 6 years from the relevant Financial Year, in cases where the TDS statements are not filed.

46. Tax Collection at Source ('TCS') on sale of certain minerals, and jewellery/bullion above Rs.2 lacs in cash

Section 206C providing for TCS is proposed to be amended so as to include TCS of 1% on following:

i. sale of coal, lignite or iron ore;
ii.sale of bullion or jewellery for cash consideration exceeding Rs.2 lacs

47. Senior Citizens (60 years and above) with no business/professional income **exonerated from payment of advance tax**, by proposing amendment to section 207;

48. Section 234D providing for **charging on interest on excess refund** came into effect from 1st June 2003, and there were controversies about its chargeability for years before that date.

It is now proposed to bring in a retrospective amendment from the above date, to clarify that the said interest shall be charged for earlier years also, in cases where the proceedings thereof are completed after the said date, undoing certain decisions favoring the assesses.

49. It is proposed to levy a **fee of Rs.200/- per day of delay of filing the statement of TDS/TCS**, **subject to maximum of the amount of TDS/TCS**, by inserting section 234E.

Correspondingly, the penalty for the aforesaid defaults of Rs.100/- per day, subject to maximum of amount of TDS/TCS, has been done away with; and a lump sum penalty between Rs.10,000/- to Rs.1 lac is proposed to be levied in such cases.

It may be noted that while the existing provisions of penalty are optional and require separate proceedings, and may not be levied where reasonable cause for delay is proved; the proposed levy of fee is compulsory and triggers automatically on default.

50. Section 254 providing for provisions of appeal to the Tribunal, are proposed to be amended so as to provide for appeal by the Tax Department before the Tribunal, against the order of the Dispute Resolution Panel, effective from 1st July 2012; which was not available hitherto.

51. Amendments to provisions relating to prosecution

Section 276C, 276CC, 277, 277A and 278, relating to prosecution for various defaults as stated therein, are proposed to be modified so as to increase the limit of tax default from the existing Rs.1 lac to Rs.2.5lacs for extended rigorous imprisonment.

It is also proposed to reduce the period of rigorous imprisonment to a maximum of 2 years from the existing 3 years in cases involving tax amounts below aforesaid limits.

It is also proposed to insert sections 280A to 280D empowering the creation of special court for fast track dispositions of tax prosecution cases.

52. Amendments to provisions relating to penalty in search cases

Section 271AAA provides for a penalty of 10% on the undisclosed income in search cases, but the same is not applicable where such undisclosed income is admitted in the course of search, the manner in which it is derived is substantiated and tax and interest thereon are paid.

It is now proposed to levy a 10% penalty in cases where the aforesaid conditions are fulfilled and the return is filed within prescribed time.

Further amendments are proposed to levy penalty at 20% in cases where any undisclosed income is not admitted in the course of search but disclosed in the return filed, and a penalty of 30-90% in other cases (where any undisclosed income is neither admitted nor included in the return filed).

53. Under the **Wealth-tax Act**, **1957** a house meant exclusively for residential purpose and which is allotter by a company to an employee/officer/director having gross annual salary of less than Rs. 5 lacs, is not chargeable to wealth-tax.

It is now proposed to raise the said limit of Rs.5 lacs to Rs.10 lacs.

II. INDIRECT TAXES - SERVICE TAX:

While presenting his proposals for Indirect taxes, unlike earlier years, this time the Finance Minister deviated the tradition in presenting his Indirect Tax Proposals, by starting with Service Tax propositions instead of Central Excise and Customs law as done in the past, highlighting the increased importance of service sector in the Indian economy which roughly contributed about 59% of the GDP this year, and its potential in nation building which was hitherto not fully tapped. These are discussed with the respective proposed amendments herein below.

1. <u>Taxation of services based on a Negative List</u>

In last year's Budget the Finance Minister concluded his proposals in respect of Service tax by initiating a public debate on the desirability of moving towards taxation of services based on a Negative List. This new concept has received tremendous support and would result in widening of the tax base by bringing into the tax net many untapped sectors.

Thus, only services specified in the Negative List would be outside the purview of Service tax, i.e. all other services, except those specifically exempted would be liable to Service tax.

The Negative List comprises of 17 heads of services which have been drawn keeping in view policy requirements, international practices and socio-economic factors playing an important role in the development of the country. The services covered by the Negative List are mentioned in the proposed Section 66D of Finance Act, 1994.

Broadly, the following services are included in the Negative List:

- All services provided by the government or local authorities, except a few specified services which are subject to competition from the private sector;
- Pre-school and school education, recognized education at higher levels and approved vocational education;
- Renting of residential dwellings;
- Entertainment and amusement services;
- Betting, gambling or lottery;
- Large part of public transportation including inland waterways, urban railways and metered cabs.

To give effect to the Negative List approach, a number of amendments have been proposed in Chapter V of the Finance Act, 1994 ("the Act") which inter alia include introduction of new sections viz.65B, 66B, 66C, 66D, 66E and 66F. Consequential changes are also proposed in Service Tax Rules, 1994, Cenvat Credit Rules, 2004 and Service Tax (Determination of Value) Rules, 2006.

Further, to support the approach of taxation based on a Negative List, introduction of Place of Provision of Service Rules, 2012 is also proposed. These rules will give the principles that will determine the location where a service shall be deemed to be provided/ supplied. Initially, these Rules will be placed in public domain for comments, which after consideration would be finalized and notified. **Once effective, these Rules would replace the existing Export and Import of Services Rules.**

Moreover, the move towards Negative List based taxation would also result in doing away with lot of descriptive definitions provided for in the Act and also reduction in the corresponding exemption notifications as these would be rendered redundant in context of the Negative List approach. Thus, the Service Tax law would be pruned by nearly 40% in terms of number of pages! Sounds good and forwarding!

2. **Rate of Service Tax:**

Considering India's overall economic scenario, battle against inflation and the increasing fiscal deficit, the Finance Minister was left with little choice in the matter, but to significantly expand the contribution of Service Tax to the exchequer, not only by widening its scope by bringing more services within its net but also increasing the rate of tax to make it equitable and progressive.

Thus, the Basic Rate of Service is proposed to be increased from 10% to 12%

New Section 66B of the Act, being the charging section for levy of service tax on the approach of Negative List stipulates that all services other than those covered by the Negative List, provided or agreed to be provided by one person to another would be subjected to tax @ 12%.

Further, no change is proposed in the current rate of Cess, and therefore those too would continue at current rates i.e., Education Cess at the rate of 2% on service tax, and Higher Education Cess at the rate of 1%;

Accordingly, the effective rate of Service Tax would be 12.36 %.

Consequential changes are also being made in the compounding rates and abatement rates in case of following:

- Service in relation to purchase and sale of foreign currency including money changing [Rule 6(7B) of Service Tax Rules, 1994];
- Service of promotion, marketing, organizing or in any manner assisting in organizing lottery [Rule 6(7C) of Service Tax Rules, 1994];
- Works contract service;
- Reversal of Cenvat Credit under Rule6(3)(i) of Cenvat Credit Rules, 2004;
- Life Insurance service [Rule 6(7A) of Service Tax Rules, 1994];
- Service in relation to transport of passengers by air (Notification No.26/2010-ST dated 22-6-2010).

(All the above amendments would be applicable from 1-4-2012.)

3. <u>Term 'Service' defined:</u>

In the entire current legislation of Service tax laws, the term 'service' has not been defined anywhere.

However, as part of the machinery provisions giving effect to the new system of taxation based on Negative List, Clause (44) of newly inserted sub-section 65B of the Act, 1994 provides the definition of service.

The definition is exhaustive one and it means '*any activity carried out by a person for another for consideration, and includes a declared service, but shall not include the following*:

- *Any activity amounting to transfer of title in goods or immovable property, or a transaction in money or actionable claim;*
- *Provision of service by employee to employer in course of his employment;*
- *fees taken in any Court or tribunal established under any law*.'

The definition is followed by three Explanations, which are summarized hereunder:

<u>Explanation 1</u> states that the above definition of service would not apply to:

- The functions performed by the MP's, MLA's, members of Panchayats and other local authorities who receive consideration while performing the functions of the office occupied by them;
- The duties performed by any person who holds under Constitution of India;
- The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee.

<u>Explanation 2</u> states that:

- An unincorporated association or a body of persons, and a member thereof shall be treated as distinct persons;
- An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

<u>Explanation 3</u> provides that a person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

Now, that the term 'service' is defined, all services apart from those specified in the Negative List would be subjected to levy of Service tax.

4. Introduction of concept of 'Declared Service':

Declared Service has been defined by clause (22) of sub-section 65B to mean '*any activity carried out by a person for another person for consideration and declared as such under section 66E*'.

Section 66E of the Act, gives a list of declared services, which includes *inter alia,* the following:

- Renting of immovable property;
- Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority;
- Service portion in the execution of a works contract;
- Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

The above indicates that irrespective of the fact the concerned activity may or may not be service, but by virtue of these provisions, it would be treated as such and be liable to Service tax.

5. Threshold Limit of Exemption:

The current Threshold Limit of exemption for small service providers is proposed to be continued at **Rs.10 lacs per year**.

6. Introduction of Composite Goods and Services Tax ('GST'):

In his last year's Speech, the Finance Minister had indicated the impending differences with certain states for switching over to GST. He had further stated to introduce the Constitution Amendment Bill in the Parliament '*as a step towards roll-out of the GST*' and the work of drafting the model legislation was also underway.

In his Speech this year, the Finance Minister has mentioned that the Constitution Amendment Bill which was introduced in Parliament in March 2011 is before the Parliamentary Standing Committee, whose recommendations are awaited, during which time the drafting of model legislation for Centre and State GST in concert with States is also under progress. Apart from this, he has also stated that the structure of GST Network (GSTN) has been approved by the Empowered Committee of State Finance Ministers and it would be set up as a National Information Utility. The GSTN will implement common PAN-based registration, returns filing and payments processing for all States on a shared platform. This will enhance transparency and check tax evasion.

In fact, this year unlike last year, he has gone a step further and mentioned that '*GSTN will become operational by August 2012*'.

We read this as a clear indication of roll - out of GST on the cards in the immediate future considering the introduction of Negative List approach coupled with other amendments proposed.

7. Date of determination of rate of tax, value of service and rate of exchange:

A new section 67A is inserted which stipulates that the rate of Service tax, value of taxable service and the rate of exchange at the time when the service is provided or agreed to be provided shall be relevant.

(This amendment will be effective from the date of enactment of the Finance Bill, 2012.)

8. **Special Audit:**

In order to curb evasion of tax on account of under valuation of any taxable service, availment and improper utilization of Cenvat Credit or to obtain a true and complete picture of accounts of a person whose operations are spread out in multiple locations, the Commissioner of Central Excise may order such person to get his accounts audited by a Chartered Accountant or Cost Accountant nominated by him.

Thus, like Section 14A and Section 14AA in case of Central Excise Act, the Finance Act, 1994 has also given similar powers in matters of Service Tax by introduction of Section 72A, to check leakage of Revenue.

(This amendment will be effective from the date of enactment of the Finance Bill, 2012.)

9. **Show cause Notice:**

Proviso to Section 73(1) of the Act states that in case of short levy, non-levy, short payment, non-payment or erroneous refund, the Officer may serve a notice on the Assessee within a period of *one year* from the relevant date which has been defined in sub-section(6) of that section, to show cause why he should not be asked to pay the specified amount.

This time limit for issue of notice is proposed to be increased from *one year* to *eighteen months* from the relevant date, so as to strengthen the enforcement mechanism of the Act, check leakage of Revenue and deter others from engaging in such types of malpractices.

Further, a new sub-section (1A) is inserted, which stipulates that follow-on notices issued on the same grounds need not repeat the grounds but only state the amount of Service tax chargeable for the subsequent period. Such Statement of tax due for the subsequent period, served on the Assessee with reference to the earlier demand notice, will be deemed as a notice under section 73(1) of the Act.

(This amendment will be effective from the date of enactment of the Finance Bill, 2012.)

10. **Settlement Commission:**

Until the last year, the Service tax law did not have any authority like Settlement Commission as in case of Central Excise for speedy disposal and easy settlement of tax disputes involving high revenue stakes, which saves time and energy of both the tax-payers well as the Department.

However, in his Speech, the Finance Minister has specifically stated that '*Settlement Commission is being introduced in Service Tax to help resolve disputes with far greater ease*'.

This is a welcome move which provides a win-win situation for both the Department as well as the Assessee who may use this to mitigate the hardships faced in going through various appeals/ litigation and put an end to complicated matters involving huge amounts.

Section 83 of the Act is amended to make provisions of Settlement Commission under Central Excise law applicable to Service tax matters also.

(This amendment will be effective from the date of enactment of the Finance Bill, 2012.)

11. Revision by Central Government:

Like Section 35EE of Central Excise Act, which provides the Central Government power to revise Orders passed by Commissioner (Appeals) against which no second appeal lies to the Appellate Tribunal, the provisions of Section 83 of the Finance Act, 1994 are being amended to make such revision mechanism applicable to Service tax also.

(This amendment will be effective from the date of enactment of the Finance Bill, 2012.)

12. Reduction in time for filing appeal before Commissioner (Appeals) and Appellate Tribunal:

The time limit for filing appeals before the Commissioner (Appeals) is proposed to be reduced from the existing period of *three months* to *two months* from the date of receipt of the Order from the Adjudicating authority.

Further, in the event of delay in filing the appeal in time, the Commissioner (Appeals) may allow it to be filed within further period of *one month* in place of *three months* as stated in the proviso to sub-section (3) of Section 85 of the Act.

Similarly, in case of appeal to the Appellate Tribunal, the time given to the Assessee to file an appeal continues to be *three months* from the date of receipt of Order to be appealed against. Whereas, by virtue of amendment in Section 86 of the Act, the time available to the Department to file an appeal is increased from earlier *three months* to *four months*.

These amendments, to be effective from the date of enactment of the Finance Bill, 2012, are clearly unfair and prejudicial to Assessee's.

13. Compounding of Offences:

Hitherto, there were no provisions for compounding any offence under the Service tax law.

However, in this Budget, the Finance Minister has amended Section 94(2) of the Act, which provides for power to make rules on certain matters, by including within its scope the powers to provide for manner of compounding and also specify the amount to be paid for compounding of offences on lines similar to those in Central Excise laws.

(This amendment will be effective from the date of enactment of the Finance Bill, 2012.)

14. Simplified processing of Refunds arising from Export of Services:

With a view to streamline the processing and disbursement of refunds due on export of services, the Finance Minister has announced a new scheme that will simplify refunds without resorting to voluminous documentation or verification.

In fact, as an added incentive, he has gone a step further, by allowing refunds for taxes paid on taxable services that have been subsequently exempted with retrospective effect.

15. **Reverse Charge Mechanism:**

Section 68(2) of the Act has introduced a new reverse charge mechanism whereby the onus of payment of Service tax under reverse charge is partly on the recipient of service and partly on the provider of service. This scheme is proposed to be applied to the following three services namely, hiring of motor vehicle, construction and man power supply.

However, in case of other services, the existing provisions of Section 66A of the Act would apply in case of payment of Service tax on reverse charge basis.

The details as regards the manner of application and extent of Service tax liability of the service receiver as well as provider will be notified subsequently.

Consequential amendment is also proposed in Service Tax Rules, 1994 as to the *'person liable for paying Service tax'*

16. **Renting of Immovable Property service – One time breather:**

In light of the numerous judgments/ litigation challenging the validity of levy of Service tax on this service, which has been ultimately held to be constitutional and in favor of the Department, the Government has taken a liberal view in the matter, and decided to waive the penalty for those Assessee's who pay the tax due on this service (as on 6-3-2012) in full with interest, provided such payment is made within the period of *six months* from the date of enactment of the Finance Bill, 2012

17. **Retrospective Exemptions:**

The following services are retrospectively exempted from the levy and payment of service tax from the dates mentioned therein:

- Repair of Roads, w.e.f. 16-6-2005 to 26-7-2009;
- Management, Maintenance and Repair performed in relation to non-commercial Government buildings, w.e.f. 16-6-2005;
- Taxable services provided to a unit in SEZ or to a developer of SEZ for their authorized operations, w.e.f. 10-2006;
- Service provided by an association of dyeing units in relation to common effluent treatment plants, w.e.f. 16-6-2005.

All the above retrospective exemptions will come into effect on the date of enactment of the Finance Bill 2012.

18. **Harmonization between Central Excise and Service Tax:**

As a measure of harmonization between Central Excise and Service Tax, a number of alignments have been made. These include a common simplified registration form and a common return for Central Excise and Service Tax, to be named EST-1. This common return will comprise only one page, which will be a significant reduction from the 15 pages of the two returns at present.

19. Amendments in Cenvat Credit Rules, 2004:

1) Existing Rule 5 to be replaced with a new rule to simplify the procedure for refund of unutilized credit on the account of exports;

2) Credit is being allowed on motor vehicles (except a few). The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed;

3) Credit of insurance and service station service is being allowed to—
(i) insurance companies in respect of motor vehicles insured and re-insured by them; and
(ii) manufacturers in respect of motor vehicles manufactured by them.

4) At present, credit on goods can be taken only after they are brought to the premises of the service provider. Rule 4(1) and 4(2) are being amended to allow a service provider to take credit of inputs on capital goods whenever the *goods are delivered to him* (even if the goods are not brought in the premises of the service provider), subject to specified conditions.

5) Rule 7 pertaining to Input Service Distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit *shall be distributed only to that unit* and that the *credit of service tax attributable to service used in more than one unit shall be distributed pro-rata* on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

6) Rule 9(1)(e) is being amended to allow availment of credit on the tax payment Challan in case of payment of service tax by the service receiver on reverse charge basis.

20. Amendments in Service Tax Rules, 1994:

1) The time period provided in Rule 4A for issuance of invoice is being increased from existing *fourteen days* to *thirty days* from the date of completion of the taxable service or receipt of payment, whichever is earlier. For Banks and Financial Institutions providing banking and other financial services, the period shall be *forty five days*;

2) Rule 6(4A) is being amended to *allow unlimited amount of permissible adjustments* i.e. the erstwhile limit of Rs.2,00,000 per month/ quarter for self adjustment of service tax is dispensed with;

3) At present, in the case of export and, individuals and firms rendering eight specified services, the point of taxation is the date of payment subject to certain conditions. This special dispensation is being *shifted* from the Point of Taxation Rules to the Service Tax Rules.

4) In case of exporters, the period extended by the Reserve Bank of India on specific requests is also being included in the period for which the tax liability is allowed to be deferred.

5) The option of deferred payment is being allowed for all service providers rather than for specific services. The facility will be *available only to individuals and partnership firms* (including limited liability partnership) upto a *turnover of taxable services* of *Rupees Fifty lakhs* subject to the condition that their *turnover of taxable services in previous year was below Rupees Fifty lakhs*. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

21. Amendments in Point of Taxation Rules, 2011:

1) The amended definition of continuous supply of service to capture the entire dimension of the concept, namely, the recurrent nature of services and the obligation for payment periodically or from time-to-time;

2) Rule 6 dealing with continuous supply of service would be deleted and it would merge with Rule 3. Accordingly, the point of taxation in case of such services will be governed by the provisions of Rule 3. Moreover, Rules 4 and 5, which deal with situations covering change in effective rate of tax and taxation of new services, would now also be applicable to continuous supply of services;

3) 'Date of payment' to be defined separately;

4) Option to be given to Assessee to determine the point of taxation in respect of advances upto Rs. 1,000/- received in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment;

5) A new residual rule to be incorporated for ascertaining the point of taxation in cases where the same cannot be ascertained by the rules prescribed.