

BUDGET 2012

Synopsis- Direct and Indirect Tax proposals

March 19'2012 [Budget presented on 16th March'2012]

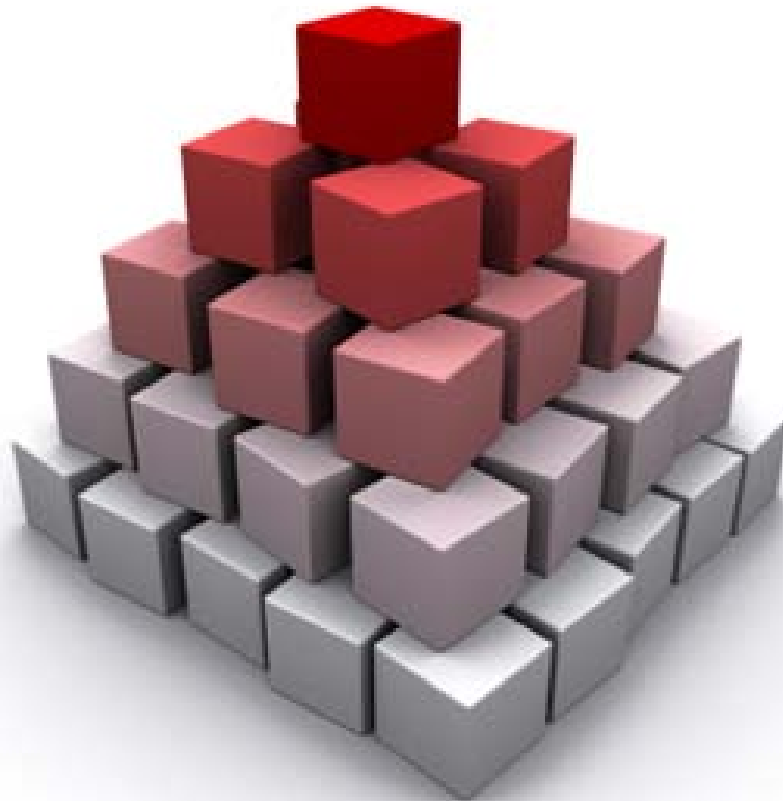
A. DIRECT TAX

- | | | |
|----|------------------------|---|
| 1. | Corporate Tax | 4 |
| 2. | International Taxation | 7 |
| 3. | Personal Taxation | 9 |

B. INDIRECT TAX

- | | | |
|----|-------------|----|
| 1. | Service Tax | 12 |
|----|-------------|----|





DIRECT TAX

1. Corporate tax

- **No change** in the Corporate Tax Rate.
- **Cascading effect** of Dividend Distribution Tax (**DDT**) in a multi-layered structure sought to be **removed** – No DDT on dividend distributed by holding company out of dividend received from its subsidiary if subsidiary has paid DDT.
- **Dividends received** by Indian companies from their foreign subsidiaries during Financial Year 2012-13 (**only**) will continued to be taxed at a **concessional rate of 15 percent** on a **gross basis**.
- **Cash donations** in excess of Rs. 10,000 **not eligible** for deduction under section 80G.
- **Share premium** received **from resident shareholders** can be **taxed** in the hands of **closely held companies** in case share premium is **excessive** as compared to **fair value**.
- General Anti-Avoidance Rules (**GAAR**) **introduced** whereby an impermissible avoidance arrangement may be disregarded/ **tax benefits denied**.
- **Time period** for completion of **assessments increased by 3 months** i.e. from 21 months to 24 months from the end of relevant Assessment Year. **Time barring date** will be **31st March** and not 31st December.
- **Advance tax** shall be **payable** in case **TDS is not deducted** by the payer/client . Accordingly, **interest** for short payment of **advance tax** to the extent of TDS not deducted shall be payable and it **can not be contended**.

- **Fee of Rs 200 per day** prescribed for **delay in furnishing TDS returns**. In addition, a **penalty** ranging from Rs 10,000 to Rs 100,000 can also be levied.
- **TDS @1% to be deducted by every transferee** (including an Individual) of an **immovable property** (other than agricultural land) if value of the **property exceeds** Rs. 20 lacs or 50 lacs (as the case may be) otherwise property **can not be registered**. **New Section 194LAA** introduced.
- **Weighted deduction of 200%** for scientific research and development **extended** for a further period of **five years** i.e. up to 31st March'2017 under **Section 35(2AB)**.
- Deduction in respect of capital expenditure on specified business under **Section 35AD extended to three new businesses**. Further, **limit** of 100% deduction **increased to 150%** of capital expenditure for some specified businesses.
- Business expenditure on account of **non-deduction of tax** on payment made to **resident** payee **shall be allowed** if resident payee has included that amount in his total income, paid the taxes and filed its income tax return. [**Section 40(a)(ia)**].
- **Threshold limit for tax audit increased** from Rs. 60 lacs **to Rs. 100 lacs** [and from Rs. 15 lacs **to Rs. 25 lacs in case of professionals**] under **Section 44AB**.
- Similarly, **threshold limit** for presumptive taxation under **Section 44AD increased** from Rs. 60 lacs to Rs. **100 lacs** and it has been clarified that benefits of Section 44AD shall not be available to person carrying on profession, agency business or earning income in the nature of commission or brokerage.

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6

Index

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- **Section 143(1) amended** to provide that processing of return will not be necessary in a case where notice under Section 143(2) has already been issued for scrutiny of the return.
- **Any remuneration paid to a director** (which is **not in the nature of salary**) will **attract TDS** under Section **194J @ 10%** i.e. Director Sitting Fees
- **Section 200A amended** to provide that the intimation generated after processing of TDS statement shall be subject to rectification under Section 154, appealable under Section 246A and deemed as notice of demand under Section 156.
- **Section 234D amended** to clarify that the provisions under this section would be **applicable** to any proceeding which is completed **on or after 1st June, 2003** irrespective of the assessment year to which it pertains.
- **Compulsory filing of income tax return** by every **resident** in relation to **assets located outside India** (including financial interest in any entity outside India) irrespective of the fact whether the resident taxpayer has taxable income or not. **[Section 139]**
- Time limit for issue of notice **for re-opening an assessment** in relation to **any asset located outside India** **increased** from 6 years to **16 years**. **[Section 149]**
- Alternative Minimum Tax (**AMT**), similar to MAT, **made applicable to non-corporate assessee** who are **claiming deductions under Chapter VI-A and Section 10AA** if the **adjusted total income** of such assessee **exceeds Rs. 20 lacs**.

2. International Taxation

- Advance Pricing Agreement (**APA**) provisions **introduced** which allows an agreement to be entered between a taxpayer and taxing authority on an appropriate transfer pricing methodology for a set of transactions over a maximum period of 5 consecutive previous years. [**Section 92CC & 92CD**]
- **Transfer Pricing Regulations** (including the procedural and penalty provisions) **made applicable to certain domestic transactions** between related parties if the **aggregate amount** of such **domestic transactions exceeds Rs.5 crore** in a year. [**Section 40A, 10AA & Chapter VI-A**]
- In a clear attempt **to override the Vodafone Judgment** of Hon'ble Supreme Court, **clarifactory amendments have been introduced** in **Section 9(1)(i)** – Business Connection, **Section 2(14)**- Definition of Capital Asset, **Section 2(47)**- Definition of Transfer and **Section 195** **with retrospective from April 1, 1962**.
- Definition of '**International Transactions**' in **Section 92B** **enlarged** through a retrospective amendment **w.e.f. 1st April'2002**.
- **Scope of 'Royalty'** under **Section 9(1)(vi)** **widened** through a retrospective amendment **w.e.f. 1st June'1976**.
- **Tax Residency Certificate (TRC)** required for claiming **relief under DTAA [Section 90]**. It means a payer would be required to obtain the TRC from the payee for making payments outside India availing DTAA benefits.

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8

Index

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- **Scope of Section 271AA enlarged** to attract the penalty of 2% of the International Transactions if the taxpayer fails to report any international transaction which is required to be reported and maintains or furnishes any incorrect information or documents. This **penalty would be in addition** to penalties in **Section 271BA and 271G**.
- **Section 44AB amended** to obtain the tax audit report by 30th November if an assessee is required to obtain a report under **Section 92E** from an accountant in respect of International Transactions. This amendment has been made to remove the existing anomaly.
- Transfer Pricing Officer (**TPO**) has been empowered to determine Arm Length Price (ALP) of international transactions not referred to him by Assessing Officer if such transactions are not reported in Form 3CEB by the assessee. [**Section 92CA**]
- **Upper ceiling of tolerance range** for determination of ALP **to be 3%** and Central Government shall notify the tolerance range.

3. Personal Taxation

- **Basic exemption limit increased** from Rs. 180,000 to **Rs. 200,000** to benefit individual tax payers .
- Tax slab of 20% widened from the existing Rs. 5-8 lacs to Rs. 5 to 10 lacs benefiting tax payers with lower tax liability by Rs. 20,000.
- Tax relief of Rs. 22,660 for an individual drawing a taxable income of more than Rs. 10 lacs.
- **Additional deduction** of up to **Rs. 20,000** for investments in notified long-term infrastructure bonds u/s **80CCF** for individuals and Hindu Undivided Families **discontinued**.
- **Interest on deposits in saving accounts** (not being time deposits) shall be **allowed** as deduction **up to Rs. 10,000** through introduction of a **new Section 80TTA**.
- Amount received from life insurance policies shall be exempt under **Section 10(10D)** only where the premium payable **for any of the years** during the term of the policy **does not exceed 10%** [earlier it was 20%] of the **actual capital sum assured**.
- Similarly, deduction for the life insurance premium as regards to insurance policies under **Section 80C** shall be allowed for only **so much of the premium payable** which **does not exceed 10%** [earlier it was 20%] of the **actual capital sum assured**.
- **Senior Citizens** (having an age of 60 years of more) have been **exempted to pay advance tax** if they **don't** have any **business income**.

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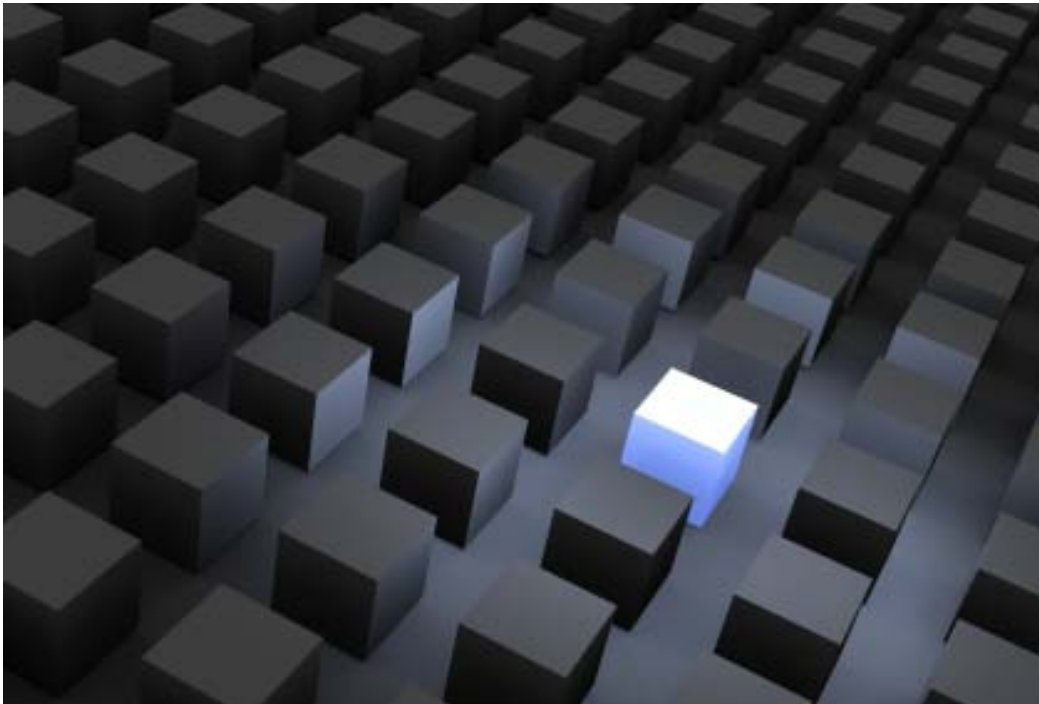
10

Index

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- Deduction up to **Rs. 5,000** allowed for **preventive health check up** of self, spouse and dependent children and parents **with in** the **overall limit of Rs. 15,000 under Section 80D**. The silver lining is that **payment** for preventive health check up can **also** be made **in cash**.
- **Relief** to an individual or HUF **from long term capital gain** on sale of a **residential property** (house of plot of land) if the sale consideration is **re-invested** in the **equity of a new start-up SME company** in the **manufacturing sector** which is utilized by the company for the **purchase of new plant and machinery** subject to certain conditions. [**new Section 54GB**].



INDIRECT TAX

1. Service Tax

- Effective rate of Service Tax **increased** from 10.3% **to 12.36%** (including education cess).
- A **Negative List approach** to taxation of services is being introduced where in the services specified in the 'Negative List' [Section 66B] shall remain outside the tax net. All other services except those specifically exempted would thus be chargeable to service tax. New Sections 65B, 66B, 66C, 66D, 66E and 66F have been proposed in Chapter V of the Finance Act, 1994.
- A **Guidance Paper** is expected to be placed in public domain which will have detailed information about the changes due to introduction of '**Negative List**' regime.
- The **dual rate structure** of maximum service tax of Rs. 150 and Rs. 750 on domestic and international journey by **air** is being **replaced** by an **advalorem rate of 12%** with **abatment of 60%** subject to the condition that no credit on inputs and capital goods is taken.
- Rates of service tax in case of **Works Contract Service** under the Composition Scheme has been **changed** from 4.12% **to 4.944%** (including education cess).
- The **period** for issue of **Show Cause Notice** is being **raised** from 12 months **to 18 months**.
- **Penalty** would be **waived** for those taxpayers who pay the service tax due **on the renting of immovable property service** (as on 06.03.2012) in full along with Interest **with in 6 months from the date of enactment of the Finance Bill, 2012**.

- **Periodicity of service tax return** has been changed to as below:
 - **Quarterly return** : For Individual, Firm and LLP
 - **Quarterly return** : Other than Individual, Firm and LLP having tax liability **LESS than Rs. 25 lacs** in immediately preceding financial year.
 - **Monthly return**: Other than Individual, Firm and LLP having tax liability **MORE than Rs. 25 lacs** in immediately preceding financial year
- **A new Section 67A** has been proposed to prescribe that the value of taxable service (particularly in the case of import and export of taxable services) and the rate of tax shall be determined in terms of Point of Taxation Rules, 2011.
- **A new section 72A** is being inserted to introduce provisions relating to **special audit** in the service tax law on the lines of Section 14 and Section 14AA of the Central Excise Act, 1944.
- **Settlement Commission provisions** has been proposed to be made **applicable to service tax**.
- **Section 68(2)** of the Finance Act, 1994 is being amended to put the onus of payment of service tax on **reverse charge** basis **partly on service provider and partly on service receiver**. The scheme is proposed to be made **applicable on three specific services**:
 - Hiring of means of transport
 - Works contracts services
 - Supply of manpower for any purpose.

- Changes in Cenvat Credit Rules, 2004:
 - Reversal of Cenvat Credit for exempt service in Rule 6(3) **increased** from 5% to **6%**.
 - **Rule 7 for 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. 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 of the turnover of all the units to which the service relates.
 - **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.
 - **Rule 14 amended** to provide that interest is chargeable only if Cenvat Credit is “**wrongly availed and utilized**”. Thus, no interest is chargeable if Cenvat Credit is wrongly availed but not utilized.
 - **Capital goods definition amended** to include motor vehicles and parts etc.
- Changes in Service Tax Rules, 1994:
 - **Excess amount of service tax** paid can be **adjusted without** any **limitation**.
 - **Invoice** can be **raised** with **in 30 days** as against the earlier limit of 14 days.
 - If the **aggregate value of taxable service** is **less than R. 50 lacs** in the immediate previous financial year, the service provider shall have the **option to pay tax on receipt basis** on the taxable services up to Rs. 50 lacs in the current financial year.

- **Period of appeals** before the Commissioner Appeals **reduced** from 3 months **to 2 months**.
- **No date** has been communicated for **implementation** of Goods and Service Tax (**GST**). However, **GST Network** (based on PAN) is expected to be **operational by August'2012**.
- **A common simplified registration form and a common return form** has been proposed for Service tax and Central Excise.

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17

We are coming with an **in-depth analysis of budget** provisions related to Direct and Indirect taxes and we'll share it with you on or before **22nd March'2012**.

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*"A dream is not that
which you see in sleep
A dream is that
which does not let you sleep"*

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