

the union budget 2011-12 – An Analysis

ANALYSIS OF IMPORTANT AMENDMENTS PROPOSED IN THE FINANCE BILL, 2011

DIRECT TAXES

Arvind Dalal	Narayan Varma	Pinakin Desai
Rajan Vora	Kishor Karia	Rajesh S. Shah
Shariq Contractor	Gautam Nayak	Sanjeev Pandit
Rajesh Kothari	Yogesh Thar	Chetan Shah
Kirit Kamdar	Saroj Maniar	Anil Doshi
Naresh Ajwani	Nina Kapasi	Pinky Shah
Sonalee Godbole		

INDIRECT TAXES

Govind Goyal	Pranay Marfatia	Hasmukh Kamdar
Puloma Dalal	Bakul Mody	Raman Jokhakar
Toral Mehta	Rajkamal Shah	Bharat Shemlani
Naresh Sheth	Suhas Paranjpe	

D I R E C T T A X E S

- All amendments proposed in The Finance Bill, 2011 would be effective from assessment year 2012-13 unless specifically mentioned otherwise.
- In this booklet all proposals of The Finance Bill, 2011 are referred to as if the amendments have been actually made.

1. TAX RATES

TAX RATES FOR INDIVIDUAL, HUF, AOP & BOI

A new category of very senior citizen, being a resident individual who is 80 years or above, is created.

The qualifying age of senior citizen, being a resident individual, has been reduced from 65 years to 60 years, only for the purpose of threshold exemption.

There are no changes in the tax slabs or levy of Education Cess and Secondary and Higher Education Cess.

DIRECT TAXES

Changes in threshold limits of basic exemption for Individual, HUF, AOP and BOI are as under:

- In case of a very senior citizen, the threshold limit is ₹ 5,00,000.
- In case of a senior citizen, the threshold limit is increased to ₹ 2,50,000.
- In case of others, threshold limit has been increased from ₹ 1,60,000 to ₹ 1,80,000.

In case of a resident woman below 60 years of age, threshold limit continues to remain at ₹ 1,90,000.

After considering the revised thresholds, the tax slabs are as under :

Income slab	Resident Individual 80 years or above	Resident Individual 60 years or above but less than 80 years	Resident Woman below 60 years	Others
Up to ₹ 1,80,000	NIL	NIL	NIL	NIL
₹ 1,80,001 – 1,90,000	NIL	NIL	NIL	10%
₹ 1,90,001 – 2,50,000	NIL	NIL	10%	10%
₹ 2,50,001 – 5,00,000	NIL	10%	10%	10%
₹ 5,00,001 – 8,00,000	20%	20%	20%	20%
Above ₹ 8,00,000	30%	30%	30%	30%

Changes in threshold limits result in maximum tax savings for the above categories of assessee, as under:

- ₹ 26,780 for resident individual aged 80 years or above.
- ₹ 1,030 for resident individual aged 65 years or above but below 80 years.
- ₹ 9,270 for resident individual aged 60 years or above but below 65 years.
- ₹ 6,180 for resident woman aged 60 years or above but below 65 years.
- ₹ 2,060 for other assessee.

There is no tax savings for woman below 60 years.

DIRECT TAXES

TAX RATES FOR CORPORATE

- Surcharge on domestic companies is reduced from 7.5% to 5%, whereas for foreign companies, it is reduced from 2.5% to 2%. Surcharge continues to be applicable only where the total income exceeds ₹ 1 crore.
- Education Cess and Secondary and Higher Education Cess remain unchanged.
- Consequent upon reduction in surcharge, the effective tax rate for domestic companies having income exceeding ₹ 1 crore reduces from 33.2175% to 32.445% and for foreign companies reduces from 42.23% to 42.024%.

TAX RATES FOR OTHERS

- There are no changes in the tax rates for co-operative society, firm and local authority.

TAX DEDUCTION AT SOURCE

- Surcharge will continue to be considered in determining the amount of tax deduction at source only from payments made to foreign companies at the revised rate of 2% of the tax.
- The Education Cess and Secondary and Higher Education Cess will continue to be considered in determining the amount of tax deduction at source only from payments made to foreign companies, non residents and salaried employees. In all other cases of tax deduction at source, cess will not be considered.
- Special rate of tax deduction at source of 5% (subject to effect of section 206AA) would apply in case of interest payments to a non-resident or a foreign company by an Infrastructure Debt Fund.

2. DEFINITION OF CHARITABLE PURPOSE – SECTION 2(15)

With effect from assessment year 2009-10, advancement of an object of general public utility is not a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any services in relation to any trade, commerce or business, for a cess or fee or any other consideration. An exception to this exclusion from charitable purpose was introduced by the Finance Act, 2010, with retrospective effect from assessment year 2009-10, in cases where the aggregate value of the receipts from such activities in a year is ₹ 10 lakh or less. This limit has now been enhanced to ₹ 25 lakh.

DIRECT TAXES

3. EXEMPTION TO CHAIRMAN AND MEMBERS OF UNION PUBLIC SERVICE COMMISSION (UPSC) – SECTION 10(45)

Notified allowances and perquisites granted to the Chairman or member (whether serving or retired) of the UPSC shall be exempt from tax retrospectively from assessment year 2008-09. Similar exemption is already available to the Chief Election Commissioner or Election Commissioner and judges of the Supreme Court for specified perquisites under the respective Acts governing their service conditions.

4. EXEMPTION TO NOTIFIED ENTITIES – SECTIONS 10(46) & 139(4C)

Specified income of a notified body or authority or Board or Trust or Commission (by whatever name called) which is established or constituted by a Central, State or Provincial Act, or constituted by Central or State Government, with the object of regulating or administering any activity for the benefit of the general public will be exempt from tax, provided it is not engaged in any commercial activity.

Such entity will be liable to file its return of income. These amendments will be effective from 1st June, 2011.

5. INFRASTRUCTURE DEBT FUND – SECTIONS 10(47), 115A, 139(4C) & 194LB

Income of an infrastructure debt fund, set up in accordance with prescribed guidelines will be exempt from tax. This exemption is granted to support the initiative of the Government to augment long term, low cost funds from abroad for the infrastructure sector. Such Fund will be liable to file its return of income.

Interest received from such a Fund by a non-resident or a foreign company shall be taxable at the rate of 5% of the gross amount of such interest and tax shall accordingly be deducted at source at the rate of 5% (plus applicable surcharge and education cess and subject to the effect of section 206AA) by the Fund on payment of such interest. These amendments are effective from 1st June, 2011.

6. WEIGHTED DEDUCTION FOR CONTRIBUTION MADE FOR APPROVED SCIENTIFIC RESEARCH PROGRAMME – SECTION 35(2AA)

The provisions of section 35(2AA) have been amended to provide that in respect of any sum paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme,

DIRECT TAXES

a weighted deduction of 200% shall be allowed as against 175% currently allowable.

7. INVESTMENT LINKED DEDUCTION IN RESPECT OF SPECIFIED BUSINESSES – SECTION 35AD

The provisions of section 35AD have been amended to include the following two new businesses as "specified business", for the purpose of allowing deduction of capital expenditure incurred (other than on land, goodwill and financial instruments):

- Developing and building a housing project under affordable housing scheme framed by the Central or State Government and notified by the CBDT.
- Production of fertilizer in a new plant or newly installed capacity in an existing plant in India.

The said businesses will be eligible for deduction provided they commence their operations on or after 1st April, 2011.

8. CONTRIBUTION TO NOTIFIED PENSION SCHEME – SECTIONS 36(1) & 80CCD

Presently, while computing the limit of ₹ 1 lakh on the deduction in respect of contributions under sections 80C, 80CCC and 80CCD, contribution made by the Central Government or any other employer to the pension scheme referred to in section 80CCD is taken into account. It is now indirectly provided that the contribution made by the Central Government or other employer to the account of the employee in such pension scheme will not be considered for computing the limit of ₹ 1 lakh. However, the limit of 10% of salary continues.

Section 36(1) has also been amended to provide for deduction to an employer in computation of his income in respect of contribution towards pension scheme as referred to in section 80CCD made by an employer. Such deduction shall not exceed 10% of the salary of the employee.

9. DEDUCTION FOR INVESTMENT IN INFRASTRUCTURE BONDS – SECTION 80CCF

The Finance Act, 2010 provided for assessment year 2011-12 a deduction up to ₹ 20,000 for investment made in long-term infrastructure bonds notified by the Central Government. The deduction is in addition to the deduction of ₹ 1 lakh under section 80C, etc. This deduction is extended for one more year i.e. for the assessment year 2012-13.

DIRECT TAXES

10. EXTENSION OF SUNSET CLAUSE FOR TAX HOLIDAY FOR POWER SECTOR – SECTION 80-IA(4)

Under section 80-IA(4) deduction is provided for profits and gains of an undertaking that begins generation of power or transmission and distribution of power, or undertakes substantial renovation and modernisation of the existing network of transmission before 31st March, 2011. The said date is now extended by one year to 31st March, 2012.

11. TRANSFER PRICING PROVISIONS – SECTION 92C

Section 92C provides for computation of Arm's Length Price (ALP) for an International Transaction between Associated Enterprises. The ALP has to be computed by applying the Most Appropriate Method. If by applying the Most Appropriate Method, more than one ALPs are determined, an arithmetical mean of the ALPs is considered as the ALP. If the actual price at which the Associated Enterprises have carried out their transactions varies by up to 5% of the arithmetical mean of the ALPs, then the actual price is considered as the ALP. In other words, in such cases, no adjustment is required to be carried out to the income.

It is now provided that the rate of allowable variation in such cases will be notified. It seems that the Government may notify different rates for different industries.

12. REFERENCE TO THE TRANSFER PRICING OFFICER (TPO) – SECTION 92CA

Under section 92CA, the Assessing Officer can refer the computation of the ALP for an International Transaction between Associated Enterprises to the TPO. The TPO can then make necessary enquiries and call for information from the assessee.

The issue is under debate as to whether the TPO can also compute ALP in respect of International Transactions not referred to him by the Assessing Officer but which are noticed by him during the course of proceedings before him.

It is now provided that in such cases the TPO will be empowered to make necessary enquiries and call for information in respect of international transactions not referred to him by Assessing Officer and to compute the ALP in respect thereof.

Power to conduct survey is also given to the TPO under section 133A.

These amendments are effective from 1st June, 2011.

DIRECT TAXES

13. TRANSACTIONS WITH PERSONS IN NOTIFIED JURISDICTIONAL AREAS – SECTION 94A

There are several offshore centres which provide low/nil tax rates and have secrecy laws. By entering into transactions with entities in these centres, a person can avoid taxes.

In order to discourage assesseees from undertaking such transactions a new section is inserted providing for notification of a country or territory outside India, (having regard to lack of effective exchange of information from them), as a Notified Jurisdictional Area (NJA). Any assessee entering into a transaction with a person located in any such NJA can have following consequences:

- i) All the parties to the transaction shall be deemed to be Associated Enterprises within the meaning of section 92A and the specified transaction shall be deemed to be international transaction within the meaning of section 92B. All the provisions of transfer pricing would apply except provisions relating to permissible variation in ALP (contained in second proviso to section 92C).
- ii) For claiming deduction in respect of any payment made to a financial institution located in a NJA, the assessee will have to provide an authorisation (in prescribed form) to the Central Board of Direct Taxes or any other Income-tax authority to seek relevant information from the said financial institution. If an authorisation is not given, no deduction will be allowed for the payment made to such financial institution.
- iii) If any expenditure or depreciation allowance is claimed for a transaction with a person located in NJA, no deduction will be allowed unless the assessee maintains documents and furnishes such information as may be prescribed.
- iv) If the assessee has received (or credited) any sum from a person located in NJA, he will have to provide explanation for the source of amount in the hands of the remitter to the satisfaction of the Assessing Officer, failing which such sum shall be deemed to be the income of the assessee for the relevant assessment year.
- v) If a person located in NJA is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, then the tax has to be deducted at the rate of 30% or applicable higher rate under the Income-tax Act.

DIRECT TAXES

For the above purposes, person located in NJA is widely defined.

This amendment is effective from 1st June, 2011.

14. DIVIDEND FROM FOREIGN SUBSIDIARY COMPANIES – SECTION 115BBD

At present, if any resident receives dividend from a foreign company, it is taxable as normal income. Thus Indian companies pay tax @ 30% (plus surcharge and education cess as applicable) on such foreign dividend.

It is now provided that any dividend income of an Indian Company from a foreign subsidiary, will be subjected to tax @ 15% (plus surcharge and education cess, as applicable). No expenditure will be allowed against such foreign dividend.

This provision will apply only for one assessment year 2012-13.

15. MINIMUM ALTERNATE TAX (MAT) – SECTION 115JB

With a reduction in the rate of surcharge for domestic companies from 7.5% to 5%, the MAT rate has been enhanced from 18% to 18.5% of book profits, to keep the effective rate of MAT at the same level. The gap between the rates of corporate tax and the rate of MAT has been effectively narrowed further. In view of this, for companies with book profits in excess of ₹ 1 crore, the effective MAT rate will be 20.00775%, as against the existing rate of 19.9305%.

The exemption from MAT so far available for income of an entrepreneur/developer from a unit in a Special Economic Zone (SEZ)/ SEZ, will no longer be available with effect from assessment year 2012-13.

16. ALTERNATE MINIMUM TAX ON LLPs – SECTIONS 115JC TO 115JF

A new Chapter XII-BA has been inserted to provide for levy of Alternate Minimum Tax (AMT) on Limited Liability Partnerships.

AMT will be payable when tax payable by an LLP on the total income computed in accordance with other provisions of the Act (Regular Income-tax) is less than 18.5% of the 'Adjusted Total Income'. Adjusted Total Income means total income computed under the normal provisions of the Act as increased by the deduction claimed under section 10AA and deductions under any of the provisions of Part C of Chapter VI-A. AMT will be taxed at 18.5% (plus applicable education cess) of the Adjusted Total Income.

DIRECT TAXES

Provision has been made for allowing credit of excess of the AMT paid over the Regular Income-tax. This tax credit shall be allowed to be carried forward up to 10 assessment years. The tax credit will be set off in an assessment year in which Regular Income-tax exceeds the AMT and the set off will be allowed to the extent of the excess of Regular Income-tax over the AMT.

Every LLP will have to file a Report from a chartered accountant in the prescribed form on or before the due date for filing of the return of income.

It will be noticed that where the aggregate of the deductions under section 10AA and under Part C of Chapter VIA exceeds 40.13% of the income before such deductions, AMT becomes payable as shown in the computation below:

Regular Income-tax	₹
Income before deductions	1,00,000
Less: Deductions under Part C of Chapter VI-A & under section 10AA	40,130
Total Income	59,870
Tax @ 30.9%	18,500
AMT @ 18.5%	
Income after deductions	59,870
Add: Deductions under Part C of Chapter VI-A & under section 10AA	40,130
Adjusted Total Income u/s 115JC	1,00,000
Tax @ 18.5%	18,500

17. TAX ON DISTRIBUTED PROFITS AND INCOME - SECTIONS 115-O & 115R

A developer of a Special Economic Zone (SEZ) was so far not liable to pay dividend distribution tax on dividends distributed out of income of development, development and operation, or development, operation and maintenance of an SEZ. Such exemption has been withdrawn with effect from 1st June, 2011.

Consequent upon reduction in surcharge for domestic companies, the effective Dividend Distribution Tax rate is reduced from 16.61% to 16.22%.

The rates of additional income tax on income distribution by a mutual fund to unitholders other than individuals/HUF have been

DIRECT TAXES

enhanced with effect from 1st June, 2011. The amended rates are as under:

Type of Fund Distributing Income	Existing Rate for Unitholder being		Amended Rate for Unitholder being	
	Individual/HUF	Other	Individual/HUF	Other
Money Market Mutual Fund or Liquid Fund	25%	25%	25%	30%
Other Mutual Fund (other than equity-oriented mutual fund)	12.5%	20%	12.5%	30%

The above rates are to be increased by appropriate surcharge and education cess. The exemption for equity oriented mutual funds continues.

18. COLLECTION OF INFORMATION – SECTIONS 131 & 133

Presently, under section 131, the Income-tax authority has powers with regard to:

- i) Discovery and inspection,
- ii) Enforcing attendance of any person and examining him on oath,
- iii) Compelling production of books of account and other documents,
- iv) Issuing commissions, and
- v) Impounding books of account/documents.

Certain powers to call for information are also available under section 133.

Now, it is provided that when any request is received from the tax authorities of any foreign country/territory/association with whom India has signed an agreement under sections 90 or 90A, the notified income tax authority shall have similar powers to facilitate prompt collection of information, even if no proceeding is pending with respect to such person before such authority.

These amendments are effective from 1st June, 2011.

19. EXTENSION OF DUE DATE FOR CORPORATE ASSESSEES HAVING INTERNATIONAL TRANSACTIONS – SECTION 139(1)

The due date for filing of Income tax return and transfer pricing report for corporate assesseees having international transactions is

DIRECT TAXES

extended to 30th November from 30th September. This amendment is applicable with effect from 1st April, 2011 and will accordingly apply to Income tax returns for AY 2011-12 onwards. Interestingly, no corresponding amendment is made in the specified date for obtaining and filing tax audit report under section 44AB.

20. EXEMPTION FROM FURNISHING RETURN OF INCOME – SECTION 139(1C)

Currently, every person whose total income exceeds basic exemption limit is mandatorily required to file his return of income. The Central Government is now empowered to exempt any class or classes of persons from mandatory filing of return of income through notification in the Official Gazette. Such notification shall specify the conditions for availing the benefit of such exemption from filing return of income. From the budget speech and the explanatory memorandum, it appears that this benefit is intended to cover salaried employees whose entire tax liability is discharged by the employer through deduction of tax at source

This amendment will be effective from 1st June, 2011.

21. EXTENSION OF TIME LIMIT FOR ASSESSMENT IN CASE OF EXCHANGE OF INFORMATION – SECTIONS 153 & 153B

Section 153 of the Income-tax Act provides for the time limits for completion of assessment and reassessment. However, certain specified periods are to be excluded while computing the period of limitation for completion of assessments and re-assessments.

It is now provided that the time taken in obtaining information from the tax authorities in jurisdictions situated outside India under an agreement referred to in sections 90 or 90A or a period of six months whichever is less, should be excluded in computing the period of limitation.

These amendments will be effective from 1st June, 2011.

22. APPLICATION TO SETTLEMENT COMMISSION – SECTION 245C

Currently, an application can be made to the Settlement Commission only by a person against whom proceedings have been initiated under section 153A or section 153C as a result of search or requisition of books of account, and if the additional income tax payable on the income disclosed in the application exceeds ₹ 50,00,000, or in other cases, if the additional amount of income tax payable on the income disclosed in the application exceeds ₹ 10,00,000. The criteria for persons eligible to make an application are being expanded to include persons related to the person against

DIRECT TAXES

whom proceedings have been initiated on account of a search (specified person), and against whom proceedings have also been initiated as a result of a search. The additional amount of income tax payable on the income disclosed in the application in respect of such persons has to exceed ₹ 10,00,000. The categories of such related persons are defined.

The Settlement Commission is also given the power to rectify mistakes apparent from the record in an order passed by it within a period of six months from the date of the order. Any rectification which has the effect of modifying the liability of the applicant can be made only after giving notice and providing an opportunity of hearing to both the applicant and the Commissioner. A similar provision has been made for orders passed under the Wealth-tax Act.

These amendments are effective from 1st June, 2011.

23. ALLOTMENT OF DOCUMENT IDENTIFICATION NUMBER – SECTION 282B

Every Income-tax authority was required to allot a computer generated Document Identification Number (DIN) in respect of every notice, order, letter or any correspondence issued by him/received by him to/from any other Income-tax Authority or to/from assessee or to/from any other person from 1st July, 2011.

This proposal, inserted to streamline and check receipt/issue of documents at/from the income tax offices, is now omitted due to non-availability of requisite infrastructure with the Income-tax department.

24. REPORTING OF ACTIVITIES OF LIAISON OFFICE – SECTION 285

Non-residents having liaison office in India, set up in accordance with the RBI guidelines, will have to submit prescribed annual statement of the activities of their liaison office within 60 days from the end of every financial year to the Income-tax Department.

This will be effective from 1st June, 2011.

25. RECOGNISED PROVIDENT FUNDS – SCHEDULE IV

The Finance Act, 2006 had provided that in order to continue to enjoy recognition by certain provident funds and for the assesseees to get deduction in respect of contribution to such funds, the provident funds must comply with certain conditions by the specified date. This specified date, which has been extended from time to time, was last extended to 31st December, 2010. It is now further extended to 31st March, 2012, with retrospective effect from 1st January, 2011.

○○

INDIRECT TAXES

SERVICE TAX

The amendments proposed in the Finance Bill, 2011 of Chapter V of the Finance Act, 1994 (the Act), Notifications issued and the following Rules framed thereunder are discussed below:

- Service Tax Rules, 1994 (The Rules or Service Tax Rules)
- CENVAT Credit Rules, 2004 (CENVAT Credit Rules)
- Export of Services Rules, 2005 (Export Rules)
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules)
- Service Tax (Determination of Value) Rules, 2006 (Valuation Rules)
- Point of Taxation Rules, 2011 (POT Rules)

The amendments comes into effect from a date to be notified after the enactment of The Finance Bill except in a few cases where retrospective amendments are made. Effective dates of the amendments other than the notified date, including the changes effected through the notifications are stated against such respective changes in this compilation.

1. RATE OF TAX

Rate of service tax remains unchanged at 10% and that of education cess and secondary and higher education cess remains unchanged at 2% and 1% respectively. Thus, effective rate is unchanged at 10.3%.

2. INTRODUCTION OF NEW SERVICES

i) Services of air-conditioned restaurants with liquor licence [Section 65(105)(zzzzv)]

Serving of food or beverage including alcoholic beverages in its premises by a restaurant or by whatever name called, having a licence to serve alcoholic beverages, is a taxable service. Such restaurant should have facility of air-conditioning either in whole or any part of the establishment. Even if such restaurant is having the air-conditioning facility for a part of the financial year, it is sufficient to trigger the levy. It is clarified that 70% abatement will be provided for the food and/or beverage portion. However, service tax will not be levied on mere sale of food and/or beverages by way of pick-up or home delivery.

ii) Services of accommodation by hotel, guest house etc. [Section 65(105)(zzzzw)]

Short-term accommodation provided for a continuous period of less than three months, by hotels, inns, guest houses, clubs, camp-sites or

INDIRECT TAXES

by whatever name called, is a taxable service. It is clarified that the levy applies only when the declared tariff is ₹ 1000 per day or higher. The tax will be levied even if the actual amount charged to a customer is less than ₹ 1,000/-. Further, 50% abatement would be provided on the amount charged.

3. CHANGES IN EXISTING SERVICES

i) **Authorized Service Station's Services [Section 65(9) read with Section 65(105)(zo)]**

Presently, service stations authorized by motor vehicle manufacturers providing services of repairs, re-conditioning, restoration and servicing of motor vehicles are taxable under this category. Services in respect of motor cars, light motor vehicles and two wheelers are taxable. Services in relation to motor buses, omni buses, goods carriage, road rollers, tractors, auto-rickshaws, etc. are not taxable.

Now, any person providing services in respect of all motor vehicles excluding goods carriage vehicles and three wheelers autorickshaws are taxable. Decoration of motor vehicles and similar services are also made taxable under this category.

ii) **Life Insurance Services [Section 65(58) read with Section 65(105)(zx)]**

Life insurance premium consists of risk cover as well as other elements. Presently service tax is payable only on risk cover portion of the premium.

Service tax is now levied on the entire amount of premium excluding the investment portion wherever separately specified. Where the break up is not provided separately in the policy, service tax at 1.5% will be levied on the gross premium.

iii) **Commercial Training or Coaching Services [Section 65(27) read with Section 65(105)(zxc)]**

Presently the institutes/establishments issuing certificate/diploma/degree or any educational qualification recognized by law are excluded from the definition of "Commercial Training or Coaching Centre". Consequently coaching or training in respect of unrecognized courses imparted by such institutes was out of the service tax levy. Coaching or training in respect of such unrecognized courses by such institutes are now liable to service tax.

iv) **Club or Association Services [Section 65(25aa) read with Section 65(105)(zzc)]**

Presently, services rendered by club or association to its members are liable to service tax. The services provided to non-members

INDIRECT TAXES

were out of service tax net. Now, services provided to non-members including members' guests and members of affiliated clubs are liable to service tax.

v) **Business Support Services [Section 65(104) read with Section 65(105)(zzzq)]**

The term "operational assistance for marketing" used in the definition of business support service is now expanded to include operational or administrative assistance provided in any manner.

vi) **Legal Services [Section 65(105)(zzzm)]**

Presently, services provided by a business entity to a business entity in relation to advice, consultancy or assistance in any branch of law, excluding representation services, are taxable. Now, the scope of service is expanded to include services:

- a) provided by a business entity to any person in relation to advice, consultancy or assistance in any branch of law
- b) provided by any person to a business entity in relation to representation services before any court, tribunal or authority.
- c) provided by an arbitral tribunal to a business entity in respect of arbitration.

The services provided by an individual to an individual and services other than representation provided by an individual to a business entity are still out of the scope of the levy. Further, representation services provided by a business entity to an individual are also not taxable.

vii) **Health Services [Section 65(25a) read with Section 65(105)(zzzo)]**

Presently, following services are taxable under this category:

- a) Health checkup or preventive care services provided by a hospital, nursing home or a multi speciality clinic to an employee of a business entity for which the payment is received by a service provider from such business entity; and
- b) Health checkup or treatment services provided to any person by hospital, nursing home or multi speciality clinic for which payment is directly received by service provider from insurance company.

The scope of "health services" is now expanded. Service provided by a clinical establishment or by a doctor (not an employee of clinical establishment) providing services from such clinical establishment for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine are now made liable to service tax under this category.

INDIRECT TAXES

Service provided to any person by above referred service providers is liable to service tax irrespective of a person making payment for such services. All payments (whether made by service recipient or by his employer or by the insurance company) are now liable to tax.

The term "clinical establishment" means:

- a) Any hospital, maternity home, dispensary, clinic, sanatorium or an institution offering diagnosis services, treatment/care for illness, diseases, injury, deformity, abnormality or pregnancy. Such establishment should have central air conditioning (either in whole or in part) and more than 25 beds for in-patient treatment at any time during a financial year; or
- b) Any entity, independent or part of clinical establishment referred above, carrying out diagnostic or investigative services with the aid of laboratory or other medical equipment.

Only the establishments owned or controlled by the Government/ local authority are excluded. Consequently, a Government hospital, primary health centre, ESIC hospital, Municipal hospital and autonomous medical institute set up under special Act of Parliament are outside the service tax levy.

It is clarified that 50% abatement will be provided on the amount charged.

4. EXEMPTIONS

i) Business Exhibition Services

Services provided by an organizer for holding business exhibitions outside India are exempted.

(Refer Notification No. 5/2011-ST dated 1-3-2011 and effective from this date)

ii) Works Contract Services

- a) Services provided in respect of construction, completion and finishing of new residential complex or part thereof under Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana are exempted.

(Refer Notification No. 6/2011-ST dated 1-3-2011 and effective from this date)

- b) Services classified as airport services and provided within an airport are exempted.

(Refer Notification No. 10/2011-ST dated 1-3-2011 and effective from this date)

INDIRECT TAXES

- c) Services provided wholly within a port or other port for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways are exempted.

(Refer Notification No. 11/2011-ST dated 1-3-2011 and effective from this date)

iii) General Insurance Services

Insurance service provided under Rashtriya Swasthya Bima Yojana is exempted.

(Refer Notification No. 7/2011 -ST dated 1-3-2011 and effective from this date)

iv) Transport of Goods by Air, Rail or Road

Services provided to a person located in India, in relation to transport of goods from a place outside India to a final destination outside India are exempted.

(Refer Notification No. 8/2011-ST dated 1-3-2011 and effective from this date)

v) Transport of Goods by Air

Value of air freight as determined under Section 14 of the Customs Act for the purpose of charging customs duty is exempted.

(Refer Notification No. 9/2011-ST dated 1-3-2011 and effective from 01-04-2011)

vi) Transport of Coastal Goods through inland waterways

Abatement of 25% is now provided under this category.

(Refer Notification No. 16/2011-ST dated 1-3-2011 and effective from this date)

vii) Club or Association Services

Membership fee received by an association or chamber representing industry or commerce for the period from 16/6/2005 to 31/3/2008 is exempted. Application for refund of service tax already paid for the above period can be made within six months from the date of enactment of the Finance Bill.

(Refer Section 96J of the Act).

viii) Tour Operator's Services

Service tax paid on services of inter-state or intra state transportation of passengers in a vehicle bearing contract carriage permit or a tourist vehicle permit for the period

INDIRECT TAXES

1/4/2000 to 6/7/2009 is exempted. Application for refund of service tax already paid for the above period can be made within six months from the date of enactment of the Finance Bill. Section 11B of Central Excise Act is applicable to this refund.

(Refer clause 72 of the Finance Bill read with Notification No. 20/2009-ST dated 7/7/2009)

5. AMENDMENTS IN COMPOSITION SCHEME

i) Works Contract service

CENVAT credit of service tax paid in respect of the following services is restricted to 40% where the input service provider has charged service tax on full value of services after availing CENVAT credit on inputs.

- a) Erection, commissioning and installation
- b) Commercial or industrial construction
- c) Construction of residential complex

(Refer Notification No. 01/2011-ST dated 1-3-2011 and effective from this date)

ii) Air Travel service

- a) Domestic travel-economy class tax increased from ₹ 100 to ₹ 150
- b) International travel-economy class tax increased from ₹ 500 to ₹ 750
- c) Domestic and international travel-other than economy 10% of basic fare

(Refer Notification No. 04/2011-ST dated 1-3-2011 and effective from 1-4-2011)

6. AMENDMENTS IN EXPORT RULES AND IMPORT RULES

Services covered by sub-rules (i), (ii) and (iii) of Rule 3 of the Export Rules are regrouped as follows:

- i) The category of builders providing preferential location [Section 65(105)(zzzzu)] is added to the list containing immovable property related services in Rule 3(1)(i). The said service introduced from 1/7/2010 was covered by Rule 3(1)(iii) having the criterion of location of recipient outside India rather than location of immovable property.
- ii) Categories of rail travel agent and health check-up or preventive care are shifted from the recipient based criterion in Rule 3(1)(iii) to performance based criterion in Rule 3(1)

INDIRECT TAXES

- (ii). Thus, these services will be considered exported only if they are wholly or partly performed outside India.
- iii) Categories of credit rating agency, market research agency, technical testing or analysis, transportation of goods by air, goods transport agency, opinion poll and transport of goods by rail are shifted from the performance based criterion in Rule 3(1)(ii) to the recipient based criterion in Rule 3(1)(iii). These services therefore would be treated as exports if recipient is located outside India and would not have to satisfy the condition of "performance outside India".

Identically, Import Rules are also amended by regrouping the above stated services under corresponding sub-rules of Rule 3.

(Refer Notification Nos. 12/2011-ST and 13/2011-ST both dated 1/3/2011 and effective from 1/4/2011)

7. AMENDMENTS IN VALUATION RULES

i) Money changing service

A new Rule 2B is introduced in the Valuation Rules for determining value of money changing service in terms of Section 67 of the Act as follows:

- a) The difference between buying or selling rate and RBI reference rate for the currency bought or sold of the day on which transaction was carried out, is to be multiplied by units of currency bought or sold.
- b) When RBI reference rate is not available, 1% of the value of money exchanged in Indian Rupee shall be the value.
- c) When none of the currencies is Indian Rupee, 1% of the lower of the amount receivable if both the currencies are converted to Indian Rupee at RBI reference rate is to be considered for arriving at the value.

E.g. US \$ 100 is exchanged @ ₹ 45/-

RBI reference rate = ₹ 45.5 on the relevant day.

Taxable value = $(45.50 - 45 = 0.50 \times \$ 100 = 500)$

[Note: With the reduction of rate from 0.25% to 0.1% in Rule 6(7B) of the Rules, the assessee now has two options:

Pay service tax @0.1% of the gross amount exchanged; or

Pay as per the value determined as per Rule 2B discussed above.]

(Refer Notification No. 02/2011-ST and 03/2011-ST both dated 1/3/2011 and effective from 1/4/2011)

INDIRECT TAXES

ii) Telecommunication service

An Explanation is inserted in Rule 5 to clarify that in case of telecommunication service, the gross amount paid by a person to whom the telecom service is provided by the telegraph authority shall be the value of such service.

(Refer Notification No.02/2011-ST dated 1/3/2011 and effective from this date)

8. INTRODUCTION OF POINT OF TAXATION RULES, 2011

i) These rules determine the point of time when a service is deemed to be provided. The general rule is that whichever of the following occurs earlier is the time of provision of service:

- a. the date on which service is actually provided,
- b. the date of invoice,
- c. the date of receipt of payment

When any advance is received under whatever description, the date of receipt of such advance is the point at which service tax is to be levied.

When a recipient in India is liable for service tax under reverse charge mechanism for services received from outside India, the date of payment or the date of receipt of invoice whichever is earlier is the point of taxation.

ii) When the rate of tax changes.

Eventuality	Services provided before rate change	Services provided after rate change
Invoice issued and payment received after rate change	Date of invoice or date of payment whichever is earlier	-
Invoice issued prior to rate change but payment received after rate change	Date of invoice	Date of payment
Payment received before rate change but invoice issued after rate change	Date of payment	Date of invoice
Invoice issued and payment also received before rate change	-	Date of invoice or date of payment whichever is earlier

INDIRECT TAXES

iii) When a new service is introduced in the law

- a. If an invoice is issued and payment for it is received before the service became taxable, no service tax is payable; and,
- b. If the payment is received prior to service becoming taxable and the invoice is issued within 14 days, then also no service tax is payable.

iv) Continuous supply of service for over 3 months

In this case also, in line with the general rule, if the contract mentions the date on which any amount is due to be paid, then such date or the date of invoice or the date of payment, whichever is earlier is the point of taxation. Any advance received is also taxed on the date of its receipt.

- v) In case of associated enterprises also, the date of payment or invoice or the date of debit or credit in the books of person liable to pay service tax, whichever is earlier is point of taxation.
- vi) In case of copyrights and other intellectual property rights, even when the whole amount of consideration is not ascertainable at the time of performance of service and if any payment arises out of subsequent use or benefit, the date of payment or issue of invoice whichever is earlier is the point of taxation.

[Note: It may be noted that the Service Tax Rules are suitably amended, as now the liability to pay service tax does not necessarily arise on receipt of payment. Further, the Rules are amended for facilitating adjustment of tax when the service is not finally provided.]

(Refer Notification No. 18/2011-ST dated 1/3/2011 and effective from 1/4/2011)

9. PROCEDURE AND RULES

i) Amendments in the Act : Penalty Prosecution etc.

- a. The maximum fee for delay in filing ST 3 return under Section 70 is increased from ₹ 2,000/- to ₹ 20,000/-. However, the existing rate of late fee as prescribed in Rule 7C of the Rules remains unchanged.
- b. Section 73(1A) and two provisos appended to Section 73(2) are omitted. Consequently, the benefit of reduction of penalty i.e. 25% of the amount of tax demanded, available in case of fraud, mis-statement, suppression, collusion etc. with intent to evade tax under Section 73(1A) is done away with. However, a new sub-section (4A) is inserted in Section 73 to provide that in cases where during the course of audit, verification or investigation, it is found that the transactions

INDIRECT TAXES

not reported to the department are available in the 'specified records', penalty will be imposed to the extent of 1% per month of the tax amount for the duration of default, restricted to maximum of 25% of the tax amount. The 'specified records' is defined to include computerized data as required to be maintained by the assessee as per the law and in other cases invoices recorded in the books of account.

- c. The rate of interest under Section 75 for delayed payment of service tax is increased from 13% p.a. to 18% p.a. effective from 1-4-2011 (Notification No. 14/2011-ST dated 1-3-2011). However, a concession of 3% p.a. in rate of interest is available to service providers whose value of taxable service provided in a financial year does not exceed ₹ 60.00 lakh during the financial year covered by Show Cause Notice or during the last preceding financial year. Similar concession is also provided in Section 73B, which provides for interest on delay in payment of excess tax collected.
- d. The quantum of penalty under Section 76 for delayed payment of service tax has been reduced from 2% per month to 1% per month and from ₹ 200/- per day to ₹ 100/- per day. The maximum penalty is restricted to 50% of the tax demand.
- e. The maximum penalty prescribed under Section 77 for contravention of Rules and provisions of the Act for which no specific penalty is prescribed, is increased from ₹ 5,000/- to ₹ 10,000/-. However, penalty imposable on daily rates in case of certain specified contraventions remains unchanged.
- f. Section 78 is substituted to provide that in case of fraud, collusion, willful mis-statement, suppression of facts with intent to evade payment of service tax, the mandatory penalty equal to amount of service tax shall be imposed. However, in situations where the assessee has captured true and complete details of transactions in the 'specified records', the penalty shall be 50% of the amount of service tax. Further, in the above case, if the assessee pays tax dues along with interest within 30 days from date of communication of the order, the penalty shall be 25% of the amount of service tax. Moreover, a period of 30 days is extended to 90 days in case of service providers, whose value of taxable service provided in a financial year does not exceed ₹ 60.00 lakh during the financial year covered by Show Cause Notice or during the preceding financial year.
- g. Section 80 providing for waiver of penalty under specified circumstances is amended to provide that waiver of penalty under Section 78 is available only in case where the assessee

INDIRECT TAXES

has captured true and complete details of transactions in the 'specified records'. Such waiver is not available in case of fraud, collusion, willful mis-statement, suppression of facts etc.

- h. The Joint Commissioner, in place of Commissioner, is now empowered to issue search warrant and to authorize Superintendent, in place of Deputy or Assistant Commissioner, to search premises under Section 82.
- i. Applicability of Central Excise Provisions to service tax:
Consequent upon the introduction of provisions relating to prosecution, section 9A, 9AA, 9B and 9E are made applicable. Section 34A dealing with payment of fine in lieu of confiscation is also made applicable. The new section 35R empowering the Board to issue instructions relating to non filing of appeals in certain cases in line with National Litigation Policy is also made applicable.
- j. Section 88 is inserted to create first charge on the property of the defaulter for recovery of service tax dues from such defaulter subject to the provisions of section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- k. Section 89 is reintroduced to provide for provisions relating to prosecution and shall apply in the following situations;
 - i) Provision of service or receipt of any service under reverse charge mechanism without invoice;
 - ii) Availment and utilization of Cenvat credit without actual receipt of inputs, capital goods or input services;
 - iii) Maintaining false books of accounts or failure to supply any information or submitting false information;
 - iv) Non-payment of amount collected as service tax for a period of more than 6 months.

To launch prosecution under above situations, prior sanction of the Chief Commissioner is mandatory.

ii) Amendments in the Rules:

- a. Rule 4A(1) is amended to provide that Invoice/Bill/Challan is to be issued within 14 days from the date of provision of service or receipt of payment, whichever is earlier.
- b. Rule 5B is introduced to provide that applicable rate of tax shall be the rate prevailing at the time when the services are deemed to have been provided.

INDIRECT TAXES

- c. Rule 6(1) is amended to provide that the payment of service tax to the credit of Central Government will be made by 5th/6th of the month immediately following calendar month in which service is deemed to be provided as per the POT Rules.
- d. Rule 6(3) is substituted to provide that when an invoice is issued or a payment is received for a service which is not subsequently provided, either in whole or in part, the assessee may take the credit of the service tax paid earlier, either by refunding the amount to the recipient of service along with service tax or by issue of credit note for value of service not so provided.
- e. The monetary limit of ₹ 1,00,000/- for adjustment of excess service tax paid under certain specified circumstances under Rule 6(4B)(iii) is increased to ₹ 2,00,000/-.
- f. Rule 6(6A) is introduced to provide that if an amount of service tax has been self assessed but not paid, then same shall be recovered along with interest under Section 87.

Note: Point nos. a to d hereinabove are in pursuance to introduction of POT Rules.

(Refer Notification no. 03/2011-ST dated 1-3-2011 and effective from 1-4-2011)

10. CHANGE IN EXEMPTION/REFUND MECHANISM FOR SEZ DEVELOPERS AND UNITS

The exemption is provided primarily by way of refund. However, specified services received and used for authorized operations, which are wholly consumed within the SEZ by the SEZ developer or unit not having any domestic tariff operations are exempt. The criteria for determining "wholly consumed" are laid down based on criteria provided in the Export Rules. Refund mechanism and procedure for remaining services i.e. when services are not wholly consumed in the SEZ, is prescribed. Refund of service tax paid on input service is available on *pro rata* basis based on the ratio of SEZ turnover to total turnover. The application for refund is required to be made in prescribed manner within prescribed time limit of one year from the end of the month in which actual payment of service tax is made.

(Refer Notification No. 17/2011-ST dated 1/3/2011 and effective from this date)

11. CENVAT CREDIT RULES, 2004

i) Background

The Scope of "inputs" and "input services" eligible for CENVAT Credit is subject of extensive judicial controversy.

INDIRECT TAXES

The Supreme Court had interpreted the scope of "inputs" narrowly in the case of *Maruti Suzuki Ltd. vs. CCE (2009) 240 ELT 41 (SC)*

In *Chemplast Ltd. vs. CCE (2010) 17 STR 253*, it was held that "Input Services" definition including activities relating to business cannot be interpreted to include post manufacturing activities. In *Kbace Tech Pvt. Ltd (2010) 18 STR 281*, a narrow interpretation of "Input Service" was made on the basis of Supreme Court ruling in *Maruti Suzuki*.

However, Bombay High Court in *Coca Cola India Pvt. Ltd. vs. CCE (2009) 15 STR 657 (BOM)* held that scope of "input services" is very wide to cover all business related services.

As against this, in *CCE vs. Manikgarh Cements Works (2010) 18 STR 275 (Tri - Mumbai)*, the Tribunal, held that Bombay High Court ruling in *Coca Cola* case has been impliedly overruled by Supreme Court ruling in *Maruti Suzuki* in regard to inputs, and a narrow interpretation was given to the Scope of "input Service". This ruling was confirmed by the Bombay High Court in *CCE vs. Manikgarh Cement (2010) 20 STR 456 (BOM)*.

In a subsequent ruling by the Bombay High Court in *CCE vs. Ultratech Cement Ltd. (2010) 20 STR 577 (BOM)*, after considering the Supreme Court ruling in *Maruti Suzuki* and Bombay High Court ruling in *Coca Cola*, a wide interpretation has been given to the Scope of "input services" eligible to CENVAT Credit.

In a subsequent ruling, the Supreme Court in *Ramala Sahkari Chini Mills Ltd. (2010) 260 ELT 321 (SC)* has doubted the Supreme Court ruling in *Maruti Suzuki* and referred the matter to a larger Bench.

Under this backdrop, significant changes are made in CENVAT Credit Rules, relating to scope of "inputs" and "input services", proportionate credit, etc. The amendments substantially curtail the benefit of CENVAT credit hitherto available to service providers and manufacturers.

ii) Changes in Definitions

- a) Definition of "Capital Goods" in Rule 2(a)(A) which specifies eligible goods is amended, whereby specific provision has been made, to cover goods which are used outside the factory of the manufacturer for generation of electricity for captive use within the factory.
- b) Definition of "exempted goods" in Rule 2 (d) is amended wef 1/3/2011, to include goods in respect of which exemption under Notification No. 1 / 2011-CE dt 1/3/11 (N1) is availed.
- c) Definition of "exempted services" in Rule 2(e) is amended, to include taxable service which is partially exempted, on

INDIRECT TAXES

the condition that no credit of inputs/input services used for taxable service shall be taken. An Explanation is added to clarify that "exempted services" includes trading.

- d) Definition of "manufacturer" or "producer" in Rule 2(naa) is amended to specifically cover a person who is liable to pay excise duty under Rule 4(1A) of the Central Excise Rules, 2002 in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Central Excise Tariff.
- e) The scope of "input" includes:

- all goods used in the factory by the manufacturer or
- any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products or
- all goods used for generation of electricity or steam for captive use or
- all goods used for providing any output service

The input excludes:

- light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
- any goods used for :
 - construction of a building or a civil structure or a part thereof; or
 - laying of foundation or making of structures for support of capital goods

except for the provision of following taxable services:

Service	Section 65(105) of the Act
Port	(zn)
Other Port	(zxl)
Airport	(zzm)
Commercial or Industrial Construction	(zzq)
Construction of Complex	(zzzh)
Works Contract	(zzzza)

- capital goods except when used as parts or components in the manufacture of a final product;

INDIRECT TAXES

- motor vehicles;
- any goods, such as food items, goods used in a guest house, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and
- any goods which have no relationship whatsoever with the manufacture of a final product.

An explanation is inserted to the effect that, "free warranty" means warranty provided by a manufacturer, value of which is included in the price of final product and is not charged separately.

- f) The "input service" includes the following :
- any service used by a service provider for providing an output service; or
 - any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal

and specifically includes the following:

- services used in relation to modernisation, renovation or repairs of a factory, premises of service provider or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal.

The "input service" excludes:

- services specified in the table above and architect's service [Section 65 (105) (p)] in so far as they are used for :
 - construction of a building or a civil structure or a part thereof; or
 - laying of foundation or making of structures for support of capital goods,

INDIRECT TAXES

except when used for the provision of one or more of the specified services as stated above or the taxable services specified hereafter :

Service	Section 65(105) of the Act
General Insurance (including reinsurer)	(d)
Rent-a-Cab Scheme Operator	(o)
Authorised Service Station	(zo)
Supply of Tangible Goods for use	(zzzzj)

in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods;

or

services which are provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee.

iii) CENVAT Credit

- a) Rule 3(1) is amended w.e.f. 1/3/2011 as under:
 - CENVAT credit of duty of excise specified in First Schedule to Central Excise Tariff is not allowed on any goods in respect of which the benefit of an exemption under N1 is availed; and
 - CENVAT credit is not allowed in excess of eighty-five per cent. of the additional duty of customs paid under Section 3(1) of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act.
- b) After first proviso to Rule 3(4), it is provided that, CENVAT credit is not to be utilised for payment of any duty of excise on goods in respect of which the benefit of exemption under N1 is availed.
- c) After the first proviso in Rule 3(5), a proviso is inserted to the effect that, payment is not required to be made where any inputs are removed outside the factory for providing free warranty for final products:

INDIRECT TAXES

- d) Rule 3 (5B) is amended w.e.f. 1/3/2011 to the effect that, even in cases of partial write off / partial provision of the value of any input, capital goods before being put to use in the books of accounts, payment of an amount equivalent to the corresponding CENVAT Credit taken is to be made
- e) Service tax leviable under Section 66A of the Act is added in the list of taxes under Rule 3(1) w.e.f. 18/4/06. It comes into force upon the enactment of Finance Bill, 2011.

iv) Conditions for allowing CENVAT Credit (Rule 4)

- a) Consequential change is made in Rule 4(2) to cover capital goods received outside the factory of a manufacturer for generation of electricity for captive use within the factory.
- b) Rule 4(7) which provides for availment of CENVAT Credit on input services is amended to the effect that if any payment or part thereof, made towards an input service is returned, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount proportionate to the CENVAT credit availed in respect of the amount so returned.
- c) The following Explanations are inserted in Rule 4(7):
 - Explanation III to the effect that, the amount mentioned in this sub-rule unless specified otherwise, shall be paid by the manufacturer or by debiting the CENVAT credit or otherwise on or before the 5th day of the following month/quarter (as applicable) except for the month of March, when such payment shall be made on or before the 31st March
 - Explanation II to the effect that, if a manufacturer or service provider fails to pay the amount payable under this sub-rule, the same shall be recovered in terms of Rule 14 for recovery of CENVAT credit wrongly taken.

v) Obligations of a Manufacturer and Service Provider (Rule 6)

- a) Rule 6(1) is amended to the effect that CENVAT Credit shall not be allowed on "inputs used in or in relation to the manufacture of exempted goods or for provision of exempted services" or "input services" used in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services
- b) Rule 6(2) is substituted to the effect that, where a manufacturer or service provider avails CENVAT credit in respect of any inputs or input services and manufacturers such final products or provides such output service which

INDIRECT TAXES

are chargeable to duty or tax as well as exempted goods or services, the manufacturer or service provider shall maintain separate accounts for the following:

- receipt, consumption and inventory of inputs used:
 - in or in relation to the manufacture of exempted goods;
 - in or in relation to the manufacture of dutiable final products excluding exempted goods; (#)
 - for the provision of exempted services;
 - for the provision of output services excluding exempted services;(#)
- receipt and use of input services:
 - in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;
 - in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance up to the place of removal; (\$)
 - for the provision of exempted services; and
 - for the provision of output services excluding exempted services,(\$)

shall take CENVAT credit only on inputs/ input services marked as (#) and (\$) above

c) Rule 6(3) is substituted specifying the following options to a manufacturer or service provider :

- payment of an amount equal to five per cent of value of the exempted goods and exempted services; (*) or
- payment of an amount as determined under Rule 6(3A) or
- maintenance of separate accounts for the receipt, consumption and inventory of inputs and take CENVAT credit only on inputs marked as (#) above and pay an amount as determined under Rule 6(3A) in respect of input services. The provisions of Rules 3A (b)(ii) & (iii) and (c) (i) & (ii) shall not apply to such payment

INDIRECT TAXES

- d) The following is also provided in substituted Rule 6(3) :
- if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable in as stated above (*)
 - if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount stated above in (*) shall be five per cent of the value so exempted.
 - Explanation II is substituted to clarify that, credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services.
 - *Explanation III* is inserted to the effect that, no CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.
- e) Amendments are made in Rule 6(3) in clause (b)(iii) and clause c(iii) to the effect that, after the words "manufacture of exempted goods", the words "and their clearance up to the place of removal" are inserted.
- f) Rule 6(3B) is inserted to the effect that, notwithstanding anything contained in Rules 6(1), (2) and (3), a banking company and a financial institution including a non-banking financial company, providing taxable service specified in Section 65(105)(zm) of the Act shall pay every month an amount equal to fifty per cent of the CENVAT credit availed on inputs and input services in that month.
- g) Rule 6(3C) is inserted to the effect that, notwithstanding anything contained in Rules 6(1), (2), (3), and (3B) a service provider providing the following taxable services :

Service	Section 65(105) of the Act
Life Insurance (including reinsurer)	(zx)
ULIP	(zzzzf)

shall pay every month an amount equal to twenty per cent of the CENVAT credit availed on inputs and input services in that month.

INDIRECT TAXES

- h) Rule 6(3D) is inserted to the effect that, payment of an amount under Rule 6(3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.
- i) An explanation is inserted to the effect that "Value" for the purpose of Rule 6(3) & (3A) shall :
- have the same meaning as assigned to it under Section 67 of the Act, read with rules thereunder or, as the case may be, the value determined under Sections 3, 4 or 4A of the Excise Act, read with rules thereunder.
 - in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under the Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or
 - in case of trading, shall be the difference between the sale price and the purchase price of the goods traded.
- j) Explanations are inserted containing provisions similar to those in Rule 4
- k) Rule 6(5), which hitherto provided for availment of 100% CENVAT Credit on 17 specified services, is deleted.
- l) Rule 6(6A) is inserted to the effect that, the provisions of Rules 6(1), (2), (3) and (4) shall not be applicable in case the taxable services are provided without payment of service tax, to a unit in a SEZ or to developer of a SEZ for their authorised operations.

vi) Documents and Accounts

Under Rule 9(7), wef 1/3/11, a uniform time limit of 10 days from the end of month / quarter, is prescribed for filing of returns by manufacturers

(Refer Notification No. 3/2011-CE (N.T.) dated 1/3/2011 effective from 1/4/2011 except wherever specified otherwise)

○○

CENTRAL EXCISE

Changes in Central Excise Act, 1944 are effective from the date of enactment of Finance Bill, 2011, except where specified otherwise.

1. CHANGES IN CENTRAL EXCISE ACT, 1944

i) Demand of duty and Penalty

Section 11A dealing with recovery of duties not levied or not paid or short levied or short paid or erroneously refunded and Section 11AC dealing with levy of penalty in such cases are completely redrafted. The important amendments in this regard are as follows:

- a) At present penalty equivalent to duty payable (100% of duty) is leviable in cases involving fraud, collusion, wilful misstatement, or suppression of facts. Now in such cases if during an audit, investigation or verification it is found that duty is not paid, but transactions to which such duty relates are recorded by the manufacturer in the specified records, then mandatory penalty would be at lower rate of 50% of instead of 100% of duty payable. 'Specified records' means records including computerised records maintained by the person chargeable with the duty, in accordance with any law for the time being in force. Even in cases where the Notice proposes levy of penalty equivalent to duty payable (100% of duty) and the Central Excise Officer is of the opinion that the transactions in respect of which Show Cause Notice was issued are recorded in specified records the penalty equal to only 50 % of the duty will be leviable.
- b) The provisions relating to compounding of penalty are also amended. At present, in the cases involving fraud, suppression etc., a person to whom Central Excise Officer has served the Show Cause Notice, is allowed to pay the duty demanded, interest thereon and compounded penalty equal to 25% of the duty within 30 days of the receipt of the Adjudication order. Under the amended provisions, in such cases, if the person chargeable with duty pays the duty along with interest before the issuance of show cause notice, the penalty would be equal to one per cent of such duty per month to be calculated from the month following the month in which such duty is payable, but not exceeding 25% of such duty.
- c) At present when Show Cause Notice is issued for extended period of five years in cases involving fraud, suppression etc, if charges of fraud, suppression, etc, alleged in the Show Cause Notice are not established, the demand for duty interest and penalty fails. It is now provided that in such cases if any appellate authority, tribunal or court concludes that such Show

INDIRECT TAXES

Cause Notice is not sustainable for the reason that charges of fraud, suppression, etc are not established against the person to whom the Notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year deeming as if the original Notice was issued for duty demand for one year only.

ii) Interest

In terms of Section 11AA, where the duty short levied or short paid, etc. is deposited by a manufacturer after the duty is determined by a Central Excise Officer, he is required to pay interest for delayed payment of duty for a period from the expiry of three months from the date of determination to the date of actual payment of duty. However under Section 11AB, if the short levied or short paid duty is deposited by the manufacturer voluntarily before any Notice is issued to him, interest for delayed payment is required to be paid for the period from the first date of the month succeeding the month in which duty is ought to have been paid. Sections 11AA and 11AB are substituted with new Section 11AA which now provides that notwithstanding any thing contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder, the person who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate as may be specified, from the date on which such duty becomes due up to the date of actual payment of the amount due, whether such payment is made voluntarily or after determination of the amount of duty. Central Government has fixed the rate of eighteen percent per annum *vide* the Notification No. 6/2011 dt 1st March 2011,

iii) First charge on property for Central Excise dues

Section 11E is inserted in the Act, to create a first charge on the property of a defaulter for recovery of Central Excise dues subject to the provisions of the Companies Act, 1956, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002. This implies that after the dues, if any, owing under these provisions, dues under the Central Excise Act, shall have first charge.

iv) Search of Premises

Section 12 F is inserted in the Act to empower Joint Commissioner/Additional Commissioner of Central Excise, either himself or through any Central Excise Officer to search any place if he has reasons to believe that any documents or books or things, which shall be useful for or relevant to any proceedings under the Act are secreted in such place and seize such documents or books or things.

INDIRECT TAXES

v) Legal Metrology Act, 2009

The Standards of Weights and Measures Act, 1976 is repealed and in its place 'The Legal Metrology Act, 2009' is enacted. Therefore in section 4A, the reference to The Standards of Weights and Measures Act, 1976 is substituted by reference to 'The Legal Metrology Act, 2009' with effect from 1/3/2011.

2. CHANGES IN CENTRAL EXCISE RULES 2002

(Effective from 1st March 2011)

Excise duty at the rate of 10% shall now apply to ready made garments and made up articles of textiles falling under Chapters 61, 62 and 63. It is a general practice in the garment and made up industry for brand owners to have goods manufactured from several job workers. Sub-rule 1A is inserted in rule 4 to provide that every person who gets such goods produced or manufactured on his account on job work shall pay the duty leviable on such goods. Thus the liability to pay the duty and comply with the Central Excise procedure shall be on the person on whose behalf the goods are manufactured by job workers. For this purpose he would be required to register his store room/shop/warehouse in which inputs are received for distribution to job workers and finished goods are received from the job workers. He would also be required to comply with all other provisions of Central Excise law. The job worker is exempt from payment of duty if the merchant manufacturer pays the duty. Alternatively, the merchant manufacturer may authorise the job worker to obtain registration and comply with all the formalities of Central Excise including payment of duty.

3. EXCISE TARIFF

(Effective from 1st March 2011)

- i. The following Chapter notes are inserted in the first schedule to the Central Excise Tariff Act, 1985.
 - a) In Chapter 22, the process of repacking from bulk to retail packs, labelling or re-labelling of containers or any other process to render the beverages, spirits, vinegar marketable shall be considered as a process of manufacture.
 - b) In Chapter 26, the process of conversion of ores in to concentrate shall be considered as process of manufacture.
 - c) In Chapter 71 the process of refining gold, doer bars shall be considered as process of manufacture.
 - d) In Chapter 72, the process of galvanization shall be considered as process of manufacture.
- ii. In note 5 of Chapter 33, in respect of perfumes, commonly known as "Attar", repacking from bulk pack to retail packs

INDIRECT TAXES

labelling or re labelling of the containers is a process amounting to manufacture. In practice, the repacking of attar is done at the point of retail sale to customers in the shops. Such retail shops are therefore required to obtain registration and comply with all the formalities of the Central Excise law. In order to avoid these difficulties, retail shops are exempted from the payment of duty provided that the manufacturer has paid the excise duty on such goods when cleared in bulk form, from the factory on value representing the retail sale price.

iii. Exemptions and major changes in rates

(Effective from 1st March 2011)

- a) In respect of 130 products, full exemption from the central excise duty is withdrawn. A nominal duty of one percent *ad valorem* is imposed on these items with the condition that no CENVAT credit of duty paid on input and input services is taken. Credit of duty paid on items that is subject to the levy of 1% would not be available to a manufacturer or a service provider who uses them.
- b) Excise duty at the rate of 10% is levied on readymade garments and made up articles manufactured or sold under a brand name. SSI exemption however, will be available.
- c) In case of jewellery, made of gold, silver or the precious metals and articles of these metals, the excise duty of 1% is levied only on goods manufactured or sold under brand name. Full exemption from Excise duty is retained on unbranded products.
- d) The exemption to paper manufactured from non conventional raw materials for the first clearances not exceeding 3500 metric tons per annum is withdrawn.
- e) Full exemption from Excise duty is provided in the following cases.
 - Air conditioning equipment, panels and refrigeration panels for installation of cold-chain infrastructure for preservation, storage or transport of agricultural produce and apiary, horticultural, dairy, poultry, aquatic & marine produce and meat as well as processing thereof:
 - Conveyor belt systems for use in cold storage and in mandis and warehouses for the storage of food grains and sugar.
 - Goods required for the expansion of an exiting mega/ultra mega power project subject to specified conditions.

INDIRECT TAXES

- Specified parts of sewing machines (other than those with inbuilt motors)
 - Parts of power tillers when cleared to another factory of the same manufacturer for manufacture of power tillers.
 - Cotton stalk particles board.
 - Enzymatic preparations for pre-tanning of leather.
 - Colour, unexposed cinematographic film in jumbo rolls of 400 feet and 1000 feet.
 - Pipe fittings required for a water supply project.
- f) Concessional duty of 1% is being provided for the following.
- Sanitary napkins, baby and clinical diapers and adult diapers.
 - Water filters using pressurized tap water but no electricity and their replaceable kits.
- g) Excise duty is being reduced from 10% to 5% on:
- Kits for the conversion fossil fuel vehicles into hybrid vehicles and parts of such kits.
 - Grease proof paper and glassine paper.

General rate of excise of 4% is increased to 5%.

Please refer to BCAS website www.bcasonline.org for changes in the rate structure of different excisable products in the form of a comparative chart.

○○

INDIRECT TAXES

CENTRAL SALES TAX

Section 15 of CST Act, which provides for a ceiling for the rate of tax to be charged by any State Government, on sale of "declared goods" is amended. The earlier ceiling of 4% is now raised to 5%.

○○

GOODS AND SERVICES TAX (GST)

The Finance Minister, in his budget speech has stated that the Government proposes to introduce the Constitution Amendment Bill in the current session of the Parliament to pave the way for introduction of the long-awaited Goods and Services Tax (GST).

It may be recalled that the Government originally planned to roll out GST from 1st April 2010 but a consensus could not be reached on the introduction of the Bill. The Finance Minister, in his budget speech, stated "*Unlike DTC, decisions on the GST have to be taken in concert with the States with whom our dialogue has made considerable progress in the last four years. Areas of divergence have been narrowed. As a step towards the roll-out of GST, I propose to introduce the Constitution Amendment Bill in this session of Parliament. Work is also underway on drafting of the model legislation for the Central and State GST.*"

Although, no specific date for roll out of GST is announced, but he has stated that among the other steps that are being taken for the introduction of GST is the establishment of a strong IT infrastructure. Significant progress has already been made on the GST Network (GSTN), the key business processes of registration, returns and payments are in advanced stages of finalisation. The National Securities Depository Limited (NSDL) will establish and operate the IT backbone for GST. By June 2011, NSDL will set up a Pilot portal in collaboration with eleven States prior to its roll out across the country.

Further, while introducing his proposals on Central Excise, the Finance Minister stated that in view of proposed GST, it is decided to maintain the standard rate of Central Excise at 10%. Further, certain changes are proposed in the Central Excise rate structure to prepare the ground for the transition to GST. To begin with, out of 370 items which are exempt from Excise Duty, at present, but liable for State VAT, exemption of Central Excise is withdrawn on 130 consumer goods items. The remaining 240 items would be brought into the tax net when GST is introduced.

○○

BCAS at your service

A voluntary organisation established on 6th July, 1949, BCAS has more than 8,000 members from all over the country at present and is a principle-centred and learning-oriented organisation promoting quality service and excellence in the profession of Chartered Accountancy and is a catalyst for bringing out better and more effective Government policies & laws and for clean & efficient administration and governance.

The diverse activities of BCAS include:

BCA Journal: The Bombay Chartered Accountant Journal (BCAJ) is a publication with a track record of over 40 years and is considered as an outstanding publication by tax and accounting professionals in practice or in industry. It includes analytical articles and updates on the subjects such as Direct Tax, Indirect Tax, International Tax, Accounting and Auditing and Information Technology.

Publications: Every year BCAS publishes Referencer along with a CD which is an indispensable tool for professionals as well as those in the industry. We also publish books on varied topics of professional interest such as Tax Audit Manual, Audit Check-list, TDS, Fraud, Transfer Pricing and FEMA.

Representations: BCAS makes representations to various authorities on different laws as well as on procedural issues, with a view to making them just and friendly to the general public. The representations include pre and post budget memoranda to the Ministry of Finance, Government of India, Ministry of Company Affairs, and Central Board of Direct Taxes among others.

Educational Activities: BCAS conducts various educational activities such as seminars, workshops, residential refresher courses, study circles, lecture meetings, distant learning programmes on Service tax and TDS.

Free Advisory Clinics: BCAS conducts following free clinics: Accounts & Audit Clinic, Charitable Trust Clinic and RTI Clinic to help the members & non-members in respective areas. Eminent experts provide free advice at these clinics on pre-fixed days.

BCAS Website: The website of BCAS viz. www.bcasonline.org, apart from giving the latest news, circulars and notifications relevant for professionals, also serves as a "Knowledge Portal", and is an excellent source of information.

Please visit us at our **Cyber Addresses**, and share your views with us:

Linkedin: <http://in.linkedin.com/in/bcasglobal>

Twitter: <http://twitter.com/bcasglobal>

Facebook Group: [globalcharteredaccountants](https://www.facebook.com/globalcharteredaccountants)

Our blog:

<http://globalcharteredaccountants.wordpress.com>

Our website: www.bcasonline.org

We hope to interact with you more often, as we are truly, just a click away!!

MANAGING COMMITTEE	
<p style="text-align: center;">President Mayur B. Nayak</p> <p style="text-align: center;">Hon. Secretaries Deepak R. Shah Nitin P. Shingala</p>	<p style="text-align: center;">Vice President Pradip K. Thanawala</p> <p style="text-align: center;">Hon. Treasurer Raman H. Jokhakar</p>
Members	
<p>Ameet N. Patel Himanshu V. Vasa Manish P. Sampat Narayan K. Varma Shardul D. Shah Toral N. Mehta</p>	<p>Chetan M. Shah Jayesh M. Gandhi Mukesh G. Trivedi Narayan R. Pasari Sonalee A. Godbole</p>
<p>Gaurang V. Gandhi Krishna Kumar Jhunjunwala Nandita P. Parekh Naushad A. Panjwani Sunil B. Gabhawalla</p>	
TAXATION COMMITTEE	INDIRECT TAXES & ALLIED LAWS COMMITTEE
<p style="text-align: center;">Chairman Kishor B. Karia</p> <p style="text-align: center;">Ex-Officio Mayur B. Nayak Pradip K. Thanawala</p> <p style="text-align: center;">Convenors Anil D. Doshi Chetan M. Shah Kirit R. Kamdar</p> <p style="text-align: center;">Members Ameet N. Patel Anil J. Sathe Arvind H. Dalal Devendra H. Jain Dilip V. Lakhani Gautam S. Nayak Harshal Bhuta Hitesh D. Gajaria Manesh N. Gandhi Manori S. Shah Mayur C. Kisnadwala Narayan K. Varma Nina P. Kapasi Nitin P. Shingala Pinakin D. Desai Pinky H. Shah Pradyumna N. Shah Rajan R. Vora Rajesh P. Shah Rajesh S. Kothari Rajesh S. Shah Rutvik R. Sanghvi Saurabh P. Shah Sonalee A. Godbole Tilokchand P. Ostwal Vipul N. Gandhi Yogesh A. Thar</p>	<p style="text-align: center;">Chairman Govind G. Goyal</p> <p style="text-align: center;">Ex-officio Mayur B. Nayak Pradip K. Thanawala</p> <p style="text-align: center;">Convenors Suhas S. Paranjpe Sunil B. Gabhawalla Toral N. Mehta</p> <p style="text-align: center;">Members A. R. Krishnan Ashit K. Shah Bharat M. Shemlani Bhavna G. Doshi Chandrakant B. Thakar Chirag N. Sheth Janak K. Vaghani Kanu S. Chokshi Naresh K. Sheth Naushad A. Panjwani Parind A. Mehta Pradip N. Kapasi Pranay H. Marfatia Puloma D. Dalal Rajiv J. Luthia Rajkamal R. Shah Raman H. Jokhakar Ravi A. Shah Sagar N. Shah Samir L. Kapadia Santosh M. Jain Surendra S. Gupta Tushar K. Doctor Uday V. Sathaye Udayan Choksi</p>