HEMANT ARORA & CO.
Chartered Accountants

INDIA BUDGET STATEMENT 2011

The Direct Tax and Service Tax proposals

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Contents

This document is a result of our study of the direct taxes and service tax proposals forming part of the Finance Bill and is intended to bring to you the salient proposals in a simple, condensed and comprehensible manner.

We would like to reiterate that what have been discussed in the following pages are the proposals pertaining to the direct taxes and service tax. The said proposals are open to modifications and alterations during the course of discussion in the Parliament before they eventually become law upon receiving the assent of the President of India.

Disclaimer

Foreword

The Finance Minister, Mr. Pranab Mukherjee, presented the Finance Bill 2011 to the Parliament on 28th February 2011. A few months prior to this, The Direct Tax Code Bill, 2010 was introduced in the Parliament on 30th August 2010 and the Government has since repeatedly expressed it's desire to implement the Code with effect from 1st April 2012 which is intended to replace the existing complex Income Tax Act, 1961.

With the impending implementation of the DTC in one year's time, the Union Budget 2011 was not expected to usher in big ticket changes in the Income Tax Act. True to the expectations, the Finance Minister has spared the Income Tax Act from the onslaught of major amendments but has only tinkered with some provisions of the Act to bring them in tune with the proposed Code; introduced some measures to counter tax avoidance and as always brought about changes to neutralize the impact of recent judicial interpretations considered to be adverse to the revenue.

For Individual assessee's the Budget proposals are a step towards aligning the rates with Direct Tax Code regime. The increase in exemption limits for general category of individuals would provide only a marginal relief in their personal tax bill, yet the introduction of 'Very-senior citizens' category for individuals over the age of eighty years - with exemption limits raised to Rs. 5 lakhs - is perhaps in tune with the rising life expectancy.

On industry specific front it is proposed to withdraw the tax holiday for profits from mineral oil blocks awarded after March 31, 2011 under NELP-IX or otherwise. For power units the deadline for commissioning of undertakings to enable them to enjoy a tax holiday is extended to 31st March, 2012. The new provisions introduced last year to provide investment based incentives to certain sectors by allowing 100% deduction of certain capital expenditure is sought to be extended to low cost housing and fertilizer industry also.

The rate of surcharge on Corporate Tax for domestic companies is reduced to 5% and for foreign companies to 2%. MAT continues to be the favourite hunting ground of our Finance Minister. MAT rate which use to be 10% for AY 2009-10 was raised to 15% by the July 2009 and then to 18% in February 2010. It is now proposed to be increased to 18.5%. A new avatar of MAT (called Alternate Minimum Tax) is made applicable to LLPs; SEZ developers and units would henceforth also be under the MAT regime. This would adversely impact the industries availing benefit of tax holiday.

The problem of illegal money stashed abroad has recently become an area of great concern for the Government more so with the Supreme Court actively prompting it to take serious steps to tackle the menace. Two measures announced in the Finance Bill are perceived to be sort of amnesty schemes designed to provide a window for getting undeclared income parked abroad back into India. Firstly, the concession of fifteen percent in tax rate on dividends received by Indian companies from their foreign subsidiaries during the financial year 2011-12 and secondly by allowing the foreign individuals to invest in Indian mutual funds are intended to promote the flow of money in India.

Furthermore, the Budget proposals seek to introduce a system for collection of information from foreign tax jurisdictions and also propose to introduce provisions to discourage transactions with entities in non-cooperative foreign tax jurisdictions.

From the international tax perspective the Liaison offices of foreign companies would be required to file annual information reports of their activities with the income tax department. The marginal reduction in surcharge for foreign companies from present 2.5% to 2% would reduce the effective tax rate to 42.024% from the present rate of 42.223%.

The Budget proposals on Transfer Pricing seek to introduce industry specific permissible variation between mean and transaction price which could possibly be a step towards safe harbour rules. Corporate assessees' obliged to file Transfer Pricing Reports are now permitted to file their tax returns by 30th November. The provision is aimed to facilitate preparation of documentation based on contemporaneous data pertaining to the year of international transaction. The widening of powers of the Transfer Pricing Officer so as to empower him to examine international transactions not specifically referred to him by the assessing officer is to offset a recent ruling which sought to restrict the said powers to the terms of reference made by the assessing officer.

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March 4, 2011.

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At a glance

Direct Taxes

- Basic exemption limit for general category of individuals raised from Rs. 160,000 to Rs 180,000.

- Senior citizen's income exemption limit raised to Rs. 250,000. Qualifying age for availing senior citizens exemption lowered to sixty years from present sixty five years.

- A new category named 'Very Senior Citizens' for individuals above the age of eighty years is created and the income exemption limit for such individuals to be Rs. 500,000.

- Basic exemption limit for women assessee's remains unchanged.

- New income tax exemption limits for individuals are:

Assessee class	Income exempt upto (Rs.)
Very Senior Citizens(80 and above)	500,000
Senior citizen (60 to 80)	250,000
Women citizen	190,000
Others	180,000

- Except for the above stated revision of basis exemption limits for individuals, tax rates and slabs remain unchanged

- Corporate tax remains unchanged.

- Surcharge on domestic companies reduced from 7.5% to 5%.

- Surcharge on companies other than domestic companies reduced from 2.5% to 2%.

- Minimum Alternate Tax on companies increased from 18% to 18.5%

- Minimum Alternate Tax (MAT) levied on developers of SEZ and units operating in SEZs.

- The provisions of MAT made applicable to LLPs;

- Exemption to certain salaried employees from furnishing tax returns.

- Tax benefits for New Pension System.
- Undertakings commencing commercial production of mineral tax w.e.f. 1.4.2012 or thereafter not entitled to tax holiday benefit.
- Sunset clause for tax holiday for power sector extended by one year.
- Tax incentives extended to attract foreign funds for financing infrastructure.
- Additional deduction of Rs. 20,000 for subscription to eligible infrastructure bonds proposed to be extended for one year.
- Dividend received from Indian companies from their foreign subsidiaries to be taxed at a lower rate of fifteen percent.
- Benefits of investment linked deduction extended to businesses engaged in the production of fertilizers in India.
- Investment linked deduction to businesses engaged in development of affordable housing in accordance with the scheme framed by the Central/State Government.
- Weighted deduction on contribution made to National laboratories, universities and Institute of Technology for undertaking research and development increased from 175% to 200%.
- System of collection of information from foreign tax jurisdictional areas to be strengthened to suppress creation of black money.
- Amendments to provisions relating to filing of applications before the Settlement Commission and also the powers of Settlement Commission.
- Document Identification Number scheme which was intended to given a unique number to every document filed with tax department but could not be implemented since it's introduction two years ago finally withdrawn.
- Extension of due dates for filing Corporate tax returns by assessee's covered under Transfer Pricing regime extended to 30th November.
- Direct Taxes Code (DTC) introduction date expected to remain 1.4.2012.

Service Tax

- Rate of service tax remains unchanged at ten percent.
- Abatement limits on certain services announced.
- Service tax levied on air conditioned restaurants having license to serve alcoholic beverages.
- Service tax levied on services provided by hospital having 25 or more beds along with air conditioning facility
- Service Tax on air travel - both domestic and international raised
- Service tax levied on life insurance companies
- Service tax scope enlarged on legal consultancy providers.
- All individual and sole proprietors with a turnover not exceeding Rs. 6 millions exempted from service tax audit.
- To encourage voluntary compliance the penal provision for Service Tax are being rationalized

Direct Tax Proposals

This section summarizes significant proposals on direct taxes announced in Union Budget 2011. These proposals are generally effective from financial year commencing April 1, 2011 relevant to Assessment year 2012-13. However some of the proposals are effective either prospectively or retrospectively in which case the dates from which they become applicable have been mentioned against respective proposals.

Income Tax

Rates of Tax

- The ***tax slabs for individual (other than women, senior citizens and very senior citizens)/ HUF/ AOP/ BOI/ artificial juridical person***, shall be as under:

Income slabs	Tax rate (percent)
Upto Rs. 180,000	Nil
Rs. 180,001 to Rs.5,00,000	10
Rs. 500,001 to Rs. 800,000	20
Above Rs. 800,000	30

  The above tax slabs are also applicable to taxable income of non-resident individuals irrespective of the fact whether they are women or senior citizens.

- The ***tax slabs for women resident in India*** and below the age of sixty years shall be as under:

Income slabs	Tax rate (percent)
Upto Rs. 190,000	Nil
Rs. 190,001 to Rs.500,000	10
Rs. 500,001 to Rs. 800,000	20
Above Rs. 800,000	30

- The ***tax slabs for senior citizens***, being a resident in India and who are of the age of sixty years or more but below eighty years, shall be as under:

Income slabs	Tax rate (percent)
Upto Rs. 250,000	Nil
Rs. 250,001 to Rs. 500,000	10
Rs. 500,001 to Rs. 800,000	20
Above Rs. 800,000	30

- The ***tax slabs for very senior citizens***, being a resident in India and who are of the age of eighty years or more, shall be as under:

Income slabs	Tax rate (percent)
Upto Rs. 500,000	Nil
Rs. 500,001 to Rs. 800,000	20
Above Rs. 800,000	30

- The ***Education cess and the Secondary and Higher Education cess*** shall continue at old rates of two percent and one percent respectively.

- ***Surcharge on domestic companies*** is reduced from existing 7.5% to 5% and for ***companies other than domestic companies*** the existing surcharge of 2.5% is reduced to 2%. Surcharge applies to companies having a total income exceeding Rs. 10,000,000.

- Minimum alternate tax applicable to companies proposed to be increased from 18 to 18.5% of book profits and shall apply to LLPs also.

- For all other classes of taxpayers the tax rates remain unchanged.

Definitions

- The second proviso to the definition of ***"charitable purposes"*** under section 2(15) is proposed to be amended to provide that the receipts from trade/ commerce/ business/ or rendering of services during the course of advancement of any object of general public utility shall also be considered as receipts from charitable activity provided such receipts do not exceed Rs. 2,500,000 as against the previous limit of Rs. 1,000,000. *To apply prospectively w.e.f. 1.4.2012.*

Exemptions

- A new Clause (45) to section 10 is proposed to be inserted to provide exemption to notified allowances and perquisites of the ***Chairmen and members (serving or retired) of the Union Public Services Commission.*** *To apply retrospectively w.e.f 1.4.2008.*

- A new Clause (46) to section 10 is proposed to be inserted to provide ***exemption to specified incomes of any body/authority/Board/Trust/Commission*** *established under any Central, State or Provincial Act*, or constituted by the Central government or a State Government, with the object of regulating or administering any activity for the benefit of the general public provided such a body etc. is not engaged in any commercial activity and is notified by the Central Government. *To apply prospectively w.e.f 1.6.2011.*

- A new clause (46) to section 10 is proposed to be inserted to provide ***exemption to income of an infrastructure debt fund*** set up in accordance with the prescribed guidelines. *To apply prospectively w.e.f 1.6.2011.*

Profits and gains from business or profession

- Section 35(2AA) which provides for a weighted deduction for contribution towards scientific research under approved programme undertaken by National Laboratory, University or IIT is proposed to be amended to provide a ***higher weighted deduction of 200%*** as against the existing 175% on such contributions. *To apply prospectively w.e.f . 1.4.2012**.***

- A new clause (ad) is proposed to be inserted in section 35AD(5) to extend the benefit of deduction of capital expenditure to a business engaged in ***development and building of housing project under the scheme of affordable housing*** as framed by the Central Government or a State Government, provided the same commences its operation on or after 1.4.2011. *To apply prospectively w.e.f. 1.4.2012.*

- A new clause (ae) is also proposed to be inserted to section 35AD(5) to extend the benefit of deduction of capital expenditure made on after 1.4.2011 in a new plant or a newly installed capacity in an existing plant of a undertaking ***engaged in production of fertilizers in India.*** *To apply prospectively w.e.f 1.4.2012.*

- A new clause (iva) is proposed to be inserted in Section 36(1) to provide for a deduction of ***sum paid by an employer by way of contribution towards a pension scheme as referred to in section 80CCD on account of an employee to the extent it does not exceed ten per cent of the salary of the employee in the previous year.***

Carry forward and set off losses

- Amendments to section 35AD(8)(c) are proposed to delete the word "new" prefixed to the definitions hotels and hospitals with a view to allow the assessee to set off profits under section 73A of existing hospital or a hotel, against the losses of any new hotel or hospital which begins to operates after 1st April, 2010 and which is eligible for deduction under section 35AD.

Deductions from taxable Income

- It is proposed to amend section 80CCE so as to provide that the ***contribution made by Central Government/ other employer to pension scheme*** under section 80CCD(2) on account of an employee shall be excluded from the limit of Rs. 100,000 as provided in section 80CCE.

- Deduction under section 80CCF for ***investment in long term infrastructure bonds*** is proposed to be extended to financial year 2011-12 also.

- Section 80-IA is proposed to be amended to extend ***sunset year for tax holiday to power sector to 31.3.2012*** as against existing date of 31.3.2011.

- A new proviso to clause (ii) to section 80-IB(9) is proposed to be inserted to ***withdraw the tax holiday available to undertakings engaged in commercial production of mineral oils.*** The said proviso states that the benefit of deduction under section 80-IB shall not apply to blocks licensed under a contract awarded after 31/03/2011 under the New Exploration Licensing Policy (NELP) or in pursuance of any law for the time being in force or by the Central or a State Government in India **.** *To apply prospectively w.e.f 1.4.2012.*

Special provisions relating to avoidance of tax

- The second proviso to section 92C(2), provides that for determination of the ALP in an international transaction, if the variance between ALP and the actual transaction price does not exceed five percent of the later, the actual transaction price shall be treated as ALP. The said proviso is proposed to be amended so as ***to substitute the five percent permissible variance limit of ALP by such percentage as may be notified by the Central Government*** *To apply prospectively w.e.f. 1.4.2012.*

- Section 92CA is proposed to be amended to enlarge the scope of assessment by Transfer Pricing Officer. The ***powers of TPO shall not be restricted to the international transactions specifically referred to by the AO*** but shall also extend to the transactions that comes to the TPO's notice during the course of assessment proceedings. *To apply prospectively w.e.f. 1.6.2011.*

- Section 92CA(7) is proposed to be amended to enable the TPO to exercise the powers of survey conferred upon an income tax authority under section 133A and conduct on the spot inquiries and verifications. *To apply prospectively w.e.f 1.6.2011.*

Special measures in respect of transactions with persons located in notified jurisdictions

- A new section 94A is proposed to be inserted with a view to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not allow effective exchange of information with India for detection of tax avoidance.

- The proposed section enables the Central Government to notify any country or territory outside India as a ***"notified jurisdiction"*** having regard to the lack of effective exchange of information.

- The brief contents of the said section are as under:

  - any assessee entering into a transaction, where any one of the parties to that transaction is a person located in a notified jurisdiction then, all the parties to such transaction shall deemed to be associated enterprises and the transaction shall be deemed to be an international transaction; accordingly, transfer pricing regulation shall apply to such transactions;

  - no deduction in respect of any payment made to any financial institution in said notified area shall be allowed unless the assessee furnishes an authorization in prescribed form, authorizing the income tax authorities to seek relevant information from said financial institution;

  - no deduction in respect of any other expenditure or allowances (including depreciation) arising from such transactions shall be allowed under any provisions of the Act, unless the assessee maintains and furnishes such other documents/information as may be prescribed;

  - in case of any sum received from a person located in the notified jurisdiction, the onus to explain the source of such money in the hands of payer shall lie on the assessee and in the case of his failure to discharge such onus the amount shall be deemed to be income of the assessee;

  - any payment made to a person located in a notified jurisdiction shall be liable to deduction of tax at rates, highest of the following

    - Rate or rates in force;
    - Rate specified in the relevant provision of the Act; or
    - thirty percent.

- For the purpose of this section the term "*person located in a notified jurisdictional area*" is defined to include a person resident of such an area, a person (not being an individual) established in such an area or a permanent establishment of any other person situated in such an area.

- *To apply prospectively w.e.f 1.6.2011.*

Special provisions relating to certain incomes

- Section 115A is proposed to be amended to provide that the ***interest received by a non-resident from any notified infrastructure debt fund shall be taxable at a concessional rate of five percent.*** *To apply prospectively w.e.f 1.6.2011.*

- New section 115BBD is proposed to be inserted to provide for a concessional tax at the rate of fifteen percent on ***dividend income of Indian companies received from their foreign subsidiarie***s during the financial year 2011-12. No further expenditure shall be allowed against such dividend income.

- Section 115JB relating to tax on book profits is proposed to be amended to provide that the ***tax rate on book profits (MAT) is enhanced to eighteen and one-half percent*** of such book profits from the present rate of eighteen percent.

- Further sub-section 6 to section 115JB is proposed to be amended to introduce a sunset ***provision for SEZ units presently enjoying exemption from payment of tax under MAT regime.*** *To apply prospectively w.e.f. 1.4.2012.*

- Also sub-section 6 to section 115-O is proposed to be amended so as to ***withdraw exemption presently available to SEZ developers from payment of the Dividend Distribution Tax*** on dividends declared/distributed or paid. *To apply prospectively w.e.f. 1.6.2011.*

- Consequential amendment is proposed to be made to section 10(34) by omitting the explanation whereby the dividend income received by developer of SEZ units was excluded from the gross total income.

- Section 115R(2) which provides for the levy of additional income tax on the amount of income distributed by the Mutual Fund to its unit holders is proposed to be amended to provide for a higher rate of tax at 30 percent on income distributed to persons other than individuals & HUFs. *To apply prospectively w.e.f 1.6.2011.*

Collection of information on requests received from tax authorities outside India

- New sub-section (2) is proposed to be inserted to section 131 in order to enable the income tax authorities of the rank of Assistant Commissioner or above to make an inquiry or investigation in respect of any person in relation to a Double Taxation Avoidance Agreement, even though no proceeding with respect to such person are pending.

- It is further proposed to amend section 131(3) so as to empower the aforesaid authority to impound and retain any books of accounts and other documents produced before it during the course of any proceedings under the Act.

- Similar amendments are proposed in section 133 so as to enhance the powers of the aforesaid authorities to call any information for the purposes of this Act.

- *To apply prospectively w.e.f. 1.6.2011.*

Return of income

- Section 139 which provides for the due date for filing of return of income is proposed to be amended to the extend the ***due date for filing of return of income to 30th November of the assessment year in respect of corporate assessee's who are required to furnish a transfer pricing report*** in form 3CEB. *To apply prospectively w.e.f. 1.4.2011.*

- A new sub-section (1C) is proposed to be inserted in section 139 so as to empower the Central Government to issue a notification, exempting any class or classes of persons from furnishing a return of income subject to the prescribed conditions. It is ***proposed to exempt salaried employees from filing their tax returns by issuing a notification in this regard.***

- An amendment to section 139(4C) is proposed to require a body/authority/board or trust referred to in section 10(46) and infrastructure debt funds referred to in section 10(47) to furnish a return of income, if the total income in respect of which such persons are assessable, without giving effect to the provisions of section 10 exceed the maximum amount not chargeable to income tax.

- Section 139(1B) has been amended to ***extend the existing time limit of 31.03.2011 by one year for the scheme for centralized processing of returns*** to take effect.

Time Limit for completion of assessment proceedings

- The provisions of sections 153 and 153B, which deal with the time limitation for completion of assessment, are proposed to be amended so as to exclude the period for which a reference for exchange of information is made under a DTAA.

Accordingly ***the limitation period shall be extended by the taken to receive the information or six months whichever is less***. *To apply prospectively w,e,f, 1.6.2011.*

Special Provisions relating to certain Limited Liability Partnerships

- A new chapter XII-BA and sections 115JC to 115JF are proposed to be introduced with a view to bring some consistency in the ***tax regime for LLPs*** and Corporate assessee's.

- Brief provisions thereof are as under:

  - Where the regular income tax payable for a previous year by a LLP is less than the alternate minimum tax ***(AMT)*** payable for such previous year, the adjusted total income shall be deemed to be total income of such LLP and it shall be liable to pay income tax on such total income at the rate of eighteen and one-half percent.

  - The credit for tax paid by LLP shall be allowed to the extent of the excess of the AMT paid over the regular income tax. Such credit shall be allowed to be carried forward upto the 10th assessment year immediately succeeding the assessment year for which credit becomes allowable.

  - The tax credit shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the AMT to the extent of excess of regular income tax over AMT.

  - For the purpose of this chapter the term *"adjusted total income"* shall be the total income before giving effect to this chapter as increased by
    - Deductions claimed, if any, under any section included in chapter VI-A under the heading *"C- Deductions in respect of certain incomes";* and
    - Deductions claimed, if any, under section 10AA.

  - *To apply prospectively w.e.f.1.4.2012.*

Withholding Tax

- New section 194LB is proposed to be introduced to provide for deduction of tax at source @ 5% on interest paid by a notified infrastructure debt fund to a non-resident. *To apply prospectively w.e.f. 1.6.2011.*

Settlement of cases

- The existing section 245C provides that only a person who has been searched is eligible to make an application before the Settlement Commission provided the additional income tax payable on the income disclosed in his application exceeds Rupees Five million. The proposed amendment seeks to ***expand the ambit of criteria for filing application before Settlement Commission*** by also allowing a person who is related to such an applicant and against whom proceedings have also been initiated as a result of such search to make an application before the Settlement Commission, provided the additional income tax payable by such related person on the income disclosed by him exceeds a sum of Rupees One millions. 1,000,000. *To apply prospectively w.e.f. 1.6.2011.*

- Section 245D is proposed to be amended ***to empower the Settlement Commission to amend any orders passed by it*** with a view to rectifying any mistake apparent from record, at any time within a period of six months from the date of such order. However where the proposed rectification has the effect of modifying the liability of the applicant, an opportunity of being heard is to be provided to the applicant as well as the Commissioner. *To apply prospectively w.e.f. 1.6.2011.*

Document Identification Number

- The requirement of a computer generated ***document identification number*** to be allotted in respect of every notice, order, letter or correspondence issued by an income tax authority on or after 1.7.2011 as envisaged in section 282B is proposed to be omitted. *To apply retrospectively w.e.f 1.4.2011.*

Reporting of activities of liaison offices

- A new section 285 is proposed to be introduced whereby an obligation shall be cast upon non-residents to furnish information regarding the activities of their liaison offices in India by mandating the filing of annual information statement within a period of sixty days from the end of the relevant financial year. *To apply prospectively w.e.f. 1.6.2011.*

Extension of time limit for obtaining exemption from EPFO

- It is proposed to amend the first proviso to sub-rule 1 of rule 3 in Part A to Fourth schedule of the Act in order to provide further time to EPFO to process the applications made by establishments seeking exemption under section 17 of the EPF & MP Act. Thus the time limit of 31st December 2010 is extended to 31.03.2012. *To apply retrospectively w.e.f 1.1.2011.*

Wealth Tax

Settlement of cases

- Section 22D is proposed to be amended to provide specific powers to the Settlement Commission to amend any orders passed under section 22D(4) with a view to rectifying any mistake apparent from record, at any time within a period of six months from the date of such order. Provided where the proposed rectification has the effect of modifying the liability of the applicant, no orders shall be passed without giving an opportunity of being heard to the applicant as well as the Commissioner. *To apply prospectively w.e.f. 1.6.2011.*

Service Tax Proposals

Following new services brought under the ambit of Service tax

- Services provided by air-conditioned restaurants having a license to serve alcoholic beverages in relation to serving of food and/or beverages.

- Short-term accommodation provided by a hotel**,** inn, guesthouse, club or campsite, or any other similar establishment for a continuous period of less than three months.

  To apply prospectively w.e.f. the date to be notified after enactment of the Bill.

Scope of existing services expanded/ altered

- 'Life insurance service' - to cover all services provided to a policyholder or any person, by an insurer (including re-insurer) carrying on life insurance business.

- 'Club or association service' - to include services provided to non-members

- 'Authorized service station service' –

  - to include services provided by any person;
  - cover all motor vehicles other than those meant for goods carriage and three-wheeler, scooter auto-rickshaws; and
  - also cover the services of decoration and similar services in respect of vehicles along with the services already covered.

- **'**Business support services'- to include services provided by way of operational or administrative assistance in any manner.

- 'Legal consultancy services' – to include:

  - services provided by a business entity to individuals in relation to advice, consultancy or assistance in any branch of law, in any manner;
  - representational services provided by any person to any business entity; and
  - arbitration services provided by an arbitral tribunal to any business entity.

- **'**Commercial Training or Coaching service' to also include unrecognized courses etc.

- 'Health services' - to include:

  - All services, including diagnostic services, provided, by a centrally air-conditioned (wholly or partially) clinical establishment having more than 25 beds for in-patient treatment during any part of the year;

- Diagnostic services being provided by a clinical establishment with the aid of laboratory or other medical equipment; and
- Services provided by a doctor, from the premises of a clinical establishment, *not being an employee* of such establishment.

In view of the proposed amendments, the existing definition of health services where payment was required to be made directly either by the business entity or the insurance company shall no longer prevail.

To apply prospectively w.e.f. the date to be notified, after enactment of the Bill.

Proposed Exemptions/Abatements

- Services provided by an organizer of business exhibitions in relation to business exhibitions held outside India.

- Abatement of 25% to services covered under '*Transport of goods through coastal and inland shipping'*.

- *'Works contract'* service provided for construction or finishing of new residential complex under `Jawaharlal Nehru National Urban Renewal Mission' and `Rajiv Awaas Yojana'.

- Services provided within a port or other port or an airport under the '*Works contract'* service for specified purposes.

- *'Rashtriya Swasthya Bima Yojana'* under the 'General insurance' service.

- It is proposed to introduce a modified scheme to refund service tax to SEZ units and developers which shall supersede notification No. 9/2009-ST. Further it is proposed to define 'wholly consumed' services so as to extend `outright exemption' and to permit refund of all other services on a proportionate basis.

To apply with immediate effect.

- Under the '*Transport of goods by air'* service, the value of air freight included in the assessable value of goods for charging customs duties is proposed to be excluded from taxable value for the purpose of levy of service tax.

- Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India.

To apply prospectively w.e.f. 01.04.2011.

Withdrawal / Amendments of Exemptions

- Service tax rates on travel by air proposed to be revised as follows:

  - Domestic travel (economy class): from Rs.100 to Rs.150
  - International travel (economy class): from Rs.500 to Rs.750
  - Domestic travel (other than economy class): 10% (Standard rate)

To apply prospectively w.e.f. 01.04.2011.

- Under '*Club or Association service*' it is proposed to provide exemption to the associations or chambers representing industry or commerce in respect of the membership fees for the period 16.06.2005 to 31.03.2008.

- Retrospective effect is being given to notification No.20/2009-ST dated 07.07.2009 exempting service tax on inter-State or intra-State transportation of passengers in a vehicle bearing Contract carriage permit or a tourist vehicle permit for the period from 01.04.2000 to 06.07.2009.

To apply prospectively w.e.f the date of enactment of the Bill

Rules and Notifications

- Rule 6(4B)(iii) of the Service Tax Rules, 1994 which provides for the monetary limit upto which the excess amount of service tax paid in a particular month/quarter can be adjusted against his service tax liability for the succeeding month/quarter is proposed to be amended to increase such limit from existing Rs.100,000 to Rs. 200,000. *To apply prospectively w.e.f. 1.4.2011*.

- Rule 6(7A) of the Service Tax Rules, 1994 is proposed to be amended to provide that in the case of an insurer carrying on life insurance business, where the breakup of premium is shown separately, tax shall be charged on the portion of the premium other than what is allocated for investment. Composition rate of 1% is also proposed to be increased to 1.5%. *To apply prospectively w.e.f. the date to be notified, after enactment of the Bill.*

- Rule 6(7B) of the Service Tax Rules, 1994 pertaining to service tax payable on sale and purchase of foreign exchange is proposed to be amended to omit the proviso whereby option for applying composition rate was not available in cases where consideration for service was shown separately in the invoice. Further the composition rate has been reduced from 0.25% to 0.10% of the gross amount of currency exchanged.

- It is proposed to insert a new sub-rule (6A) to Rule 6 of the Service Tax Rules, 1994, to provide that if any amount of service tax has been self-assessed and not paid, the same shall be recoverable with interest even without issuing a show cause notice.

- Service Tax (Determination of Value) Rules, 2006 are proposed to be amended to include the definition of *'value of the money changing service'* as under:

  - for a currency exchanged either from or to Indian Rupees, shall be equal to the units of currency exchanged multiplied by the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency for that day;
  - for a currency where the RBI reference rate is not available, shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money;
  - where neither of the currencies exchanged is Indian Rupee, shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day.

- An explanation is being added to rule 5(1) of Service Tax (Determination of Value) Rules, 2006 to clarify that for the purpose of Telecommunication services, the value of the taxable service shall be gross amount charged by the telegraph authority from the service receiver.

- It is proposed to insert a new sub-rule (2A) to Rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to provide that the credit of tax on certain specified input services as available to a person providing `*Works contract service*' shall be restricted to 40% of tax paid, when such tax has been paid on full value of the service after availment of CENVAT credit on inputs. *To apply prospectively w.e.f. 1.3.2011*.

Amendments in Act

Chapter V of Finance Act, 1994 proposed to be amended to,-

- Section 73 is proposed to be amended to omit sub-section (1A) and (2) which provides for the benefits of reduction of penalty available in the cases of fraud, collusion etc. Further, new subsection 4A is being inserted in section 73 to provide for penalty of 1% per month of service tax upto maximum of 25%. This new section applies where during the course of audit, verification or investigation it is found that the transactions on which service tax is not paid/levied/short levied and are not reported to the department but details of such transaction are available in the specified records, and on such transaction service tax in full or part ,as accepted to be the amount chargeable to tax along with interest payable under section 75 and penalty for the period during which the default is continues of the tax amount, is paid before service of notice on him and inform the Central Excise Officer of such payment.

- Section 76 is proposed to be amended to reduce the penalty for delayed payment of service tax from 2% to 1% per month or Rs.100 per day, whichever is higher for the period during which such default continues. However the maximum amount of penalty shall not exceed 50% of the tax amount as against the current 100%.

- The residuary penalty as provided for in section 77 of the Finance Act with respect to the contravention of rules and provisions for which no specific penalty has been provided, is proposed to be increased from Rs.5,000 to Rs.10,000.

- Section 78 is proposed to be amended to revise the maximum penalty for suppression of value of taxable service to equal to tax evaded. Further in situation covered under sub-section 4A to section 73 penalty is proposed to be 50% of service tax , but if such tax dues along with interest and penalty on it are paid with in one month such penalty is proposed to be reduced to 25%.However assessee having a turnover upto Rs. 6,000,000. in any of the year covered by the show cause notice or in the preceding year the period of depositing the tax and interest and penalty to avail the benefit of reduced penalty shall be revised to 90 days.

- For the assessee's with a turnover of upto Rs. 6,000,000 the interest chargeable under section 73B and section 75 for excess amount collected and delay in payment of service tax, respectively is proposed to be reduced from 13% to 10%.

- Section 70 is proposed to be amended to increase the maximum penalty for delay in filing of return from Rs.2000 to Rs.20000. However, the existing rate of penalty for the first 15 days and for the subsequent 15 days as well as the daily penalty of Rs.100 per day thereafter are retained without any changes.

- Section 82 is proposed to be amended so as to enable the Joint Commissioner of Central Excise to issue search warrants and authorize any authority not below the rank of Superintendent to search for or seize secreted documents/books/things.

- Section 83 to be amended so as to make the following provisions of the Central Excise Act, 1944 applicable to service tax also:

  - Section 9A: Certain offences to be non-cognizable
  - Section 9AA: Offences committed by a Company
  - Section 9B: Power of court to publish name, place of business etc. of persons convicted under the Act in the newspaper or in such manner
  - Section 9E: Application of section 562 of the Code of Criminal Procedure, 1898 and of the Probation of Offenders Act,1958 to a person convicted of an offence under Act
  - Section 34A:Confiscation or penalty not to interfere with other punishment

- A new section 88 is being inserted so as to create first charge on the property of the defaulter for recovery of service tax dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to

Bank and Financial Institution Act, 1993 and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

- It is proposed to reintroduce the provisions relating to prosecution under section 89 to provide for prosecution proceedings under following situations:

  - Provision of service without invoice;
  - Availment and utilization of CENVAT credit without receipt of inputs or input services;
  - Submitting false information;
  - Non-payment of collected amount of service tax for a period of more than six months.

  However this shall require prior approval of the Chief Commissioner of Central Excise.

To apply prospectively w.e.f. the date to be notified, after the enactment of the Bill.

Point of Taxation Rules, 2011

- The Point of Taxation Rules, 2011 have been framed to provide for the rules for determination of the point in time when the services shall be deemed to be provided. *To apply prospectively w.e.f.1.4.2011.*

Glossary

Act	The Income Tax Act, 1961 (except as otherwise stated)
AO	Assessing Officer
ALP	Arms Length Price
AMT	Alternate Minimum Tax
AOP	Association of Persons
AY	Assessment Year
BOI	Body of Individuals
CENVAT	Central Value Added Tax
DDT	Dividend Distribution Tax
DTC	Direct Tax Code
EPFO	Employee Provident Fund Organization
EPF & MP Act	Employee Provident Funds & Miscellaneous Provision Act,1952
HUF	Hindu Undivided Family
LLP	Limited Liability Partnerships
MAT	Minimum Alternate Tax
NELP	New Exploration Licensing Policy
PE	Permanent Establishment
SEZ	Special Economic Zone
ST	Service Tax
TPO	Transfer Pricing Officer

Notes