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UNION BUDGET 2012-13



COMPILED BY : **Ashwin K.Shah & Co.**
Ashwin Shah & Associates
Chartered Accountants

Office No.7, Chemox House, 2nd Flr., Barrack Lane, Dhobitalao, Mumbai - 400020
Phone Nos.: +91 22 66317919-20 ... Telefax: +91 22 22068659 Extn.31
Email: shrenikashah@aksco.in / shrenikashah@gmail.com

PREFACE

Dear Reader,

We are happy to present to you the 3rd Edition of our compilation on the Union Budget. The compilation summarizes the relevant amendments in relation to Direct and Indirect Taxes proposed by Budget 2012. It covers the proposed amendments that are relevant to the scope of our services. It also attempts to help you acquaint yourself with the major tax reforms in the year to come.

The compilation contains 5 parts. Each of the said parts has its own executive summary for your ready reference.

Revamp, refresh, reform, renew, revive & retrospect are some of the adjectives that best explain Budget 2012. It was about time tax laws took shape based on changing business scenarios & global business needs. The pace of reforms is just picking up only if you think you have had enough. GST & DTC still seem a while away but some necessary steps in the form of the Service Tax – Negative List, GST Network & applicability of General Anti Avoidance Rules for smooth transition have been taken by this budget.

A sincere attempt has been made to provide clear and accurate information. We request you to treat the matters herein contained for discussion purposes only. Before acting on any of the said information, we request you take due professional advice as it is very difficult to provide detailed pros and cons in a short synopsis like this. Also, if the need arises we will be happy to share with you a soft copy of this Budget compilation.

Your feedbacks have kept us on our toes, so please let them keep coming. We hope this compilation adds some value to you and your commercial ventures. With this we wish you the very best in your business dealings of 2012-13.

Thanking You,
CA.Ashwin K.Shah

ABOUT US

Ashwin K.Shah & Co., Chartered Accounts, headed by CA.Ashwin K.Shah, is the flagship concern of our professional practice. It has been around since August 1979. With the beginning of the 4th decade, it continues to tread forward and do more satisfying work in the Direct tax field. The concern mainly provides direct tax compliance and advisory services. It also handles the legal drafting services and arbitration services for family settlements.

Ashwin Shah & Associates, Chartered Accountants, is in its 20th year of practice. The firm is managed by CA.Shrenik A.Shah, Partner, with the able guidance of his senior partner, CA.Ashwin K.Shah. The firm handles the indirect tax and auditing practice. The firm provides compliance & consultancy services under VAT, Service Tax & allied laws, broking house incorporation, compliance, NBFC incorporation & compliance & process management services and auditing services under various statutes.

The industry interface of the firms include businesses like manufacturing of engineering items & consumer goods, stock broking, ship management services, banking companies, trading of industrial goods & hardware, etc.

CAUTION NOTE

This compilation has been put together to provide clarity to our clients & associates on the changes proposed by Budget 2012. It is not intended to advertise or publicise the firms or the services rendered in any way.

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1. Rates of Income Tax

For Individuals (Other than Senior Citizen & Women Assessee) / HUF/ AOP/ BOI /AJP

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)	AY 2012- 2013 (01.04. 2011 to 31.03.2012)
0 – 180000	NIL	NIL
180001 – 200000	NIL	10%
200001 – 500000	10%	10%
500001 – 800000	20%	20%
800001 – 1000000	20%	30%
1000001 +	30%	30%

For Individuals (being Women Assessee)

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)	AY 2012- 2013 (01.04. 2011 to 31.03.2012)
0 – 190000	NIL	NIL
190001 – 200000	NIL	10%
200001 – 500000	10%	10%
500001 – 800000	20%	20%
800001 – 1000000	20%	30%
1000001 +	30%	30%

For Individuals (being Senior Citizen Assessee)

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)	AY 2012- 2013 (01.04. 2011 to 31.03.2012)
	>=60 years	>=60 years
0 – 250000	NIL	NIL
250001 – 500000	10%	10%
500001 – 800000	20%	20%
800001 – 1000000	20%	30%
1000001 +	30%	30%

For Individuals (being Very Senior Citizen Assessee >= 80 years)

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)	AY 2012- 2013 (01.04. 2011 to 31.03.2012)
0 – 240000	NIL	NIL
240001 – 500000	NIL	10%
500001 – 800000	20%	20%
800001 – 1000000	20%	30%
1000001 +	30%	30%

Note: The above income tax shall be increased (in every case) by a Education Cess @ 2% of Income Tax and Higher Secondary Cess @ 1% of Income Tax. Surcharge is not applicable.

For Partnership Firms & LLPs

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)	AY 2012- 2013 (01.04. 2011 to 31.03.2012)
Tax rates on the taxable income of the firm	30% + 3% Cess = 30.90%	30% + 3% Cess = 30.90%

For Domestic Companies

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)	AY 2012- 2013 (01.04. 2011 to 31.03.2012)
Where total income of the Co < 1 Crore	30% + 3% Cess = 30.90%	30% + 3% Cess = 30.90%
Where total income of the Co > 1 Crore	30% + 5% Surcharge + 3% Cess = 32.45%	30% + 5% Surcharge + 3% Cess = 32.45%

For Companies other than domestic companies

Taxable Incomes	AY 2013- 2014 (01.04. 2012 to 31.03.2013)		AY 2012- 2013 (01.04. 2011 to 31.03.2012)	
	Royalties & Fees	On the balance, if any	Royalties & Fees	On the balance, if any
Where total income of the Co. < 1 Crore	50% + 3% Cess = 51.50%	40% + 3% Cess = 41.20%	50% + 3% Cess = 51.50%	40% + 3% Cess = 41.20%
Where total income of the Co. > 1 Crore	50% + 2% Surcharge + 3% Cess = 52.53%	40% + 2% Surcharge + 3% Cess = 42.02%	50% + 2% Surcharge + 3% Cess = 52.53%	40% + 2% Surcharge + 3% Cess = 42.02%

1.2 Senior Citizen exempted from advance Tax in certain cases [S. 207]

Under the existing provisions senior citizens¹ who have passive income of the nature of interest, rent, etc., are required to make payment of advance tax which results in raising compliance burden. With an intention to reduce this burden it is proposed to relax these provisions in certain cases. A comparative table showing proposal against existing provisions is tabulated here under:

Nature of Income	Proposals (Whether liable to Advance Tax)	Existing Provision (Whether liable to Advance Tax)
Business + Others	Y	Y
Only Others	N	Y

¹ The Finance Act 2011 amended the eligible age of senior citizen to 60 years

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

2. Amendments relating to Business Income

2.1 Extension of sunset provisions relating to weighted deduction on scientific research up to 31.03.2017 [S. 35(2AB)]

The Finance Act, 2010 enhanced the deduction in respect of approved in-house scientific research from 175% to 200%. However, the benefit of weighted deduction was not applicable after 31.03.2012. In order to incentivise the corporate sector to continue to spend on in-house research, it is proposed to amend this section to extend the benefit of the weighted deduction for a further period of five years i.e. up to 31st March, 2017

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

2.2 No disallowance of expenditure where payee has paid Tax for non deduction by the Payer [S. 40(a)(ia) read with 201(1) and S. 191]

Presently, provisions relating to disallowance of expenditure for non-deduction of TDS are not applicable if the payer makes payment of TDS on or before the due date of filing of return under section 139 of the Act. This implies that where such TDS is neither deducted nor paid the expense which was liable for TDS is disallowable under S. 40(a)(ia).

Further, at present a deductor is not treated as an assessee in default in case the payee has directly made the payment of tax on such income². Accordingly, if the tax has been paid by the receiver the deductor's liability is restricted to the extent of delayed payment of Tax

In situations of non deduction where on one hand S. 191 read with S. 201(1) limits the liability of the deductor to the interest on delayed payment where tax has been paid by the receiver, disallowance of expenditure still gets triggered under the present provisions of S. 40(a)(ia).

With the intention of rationalization of these provisions the Finance Bill 2012 proposes to allow expenditure even where tax is not deducted in case where such payer/ deductor is *not an assessee in default* within the meaning of S. 201(1). To conclude an expense on which TDS is not deducted and paid shall still be allowable in case following situation³

- Amount is paid to a resident payee

² Section 191 of the Income Tax Act 1961

³ Collective reading of proposed amendments to S. 40(a)(ia) and 201(1)

- Payee has furnished a return of income under S. 139⁴
- Payee has accounted for the amounts received on which payer has not deducted Tax while computing his income
- Payee has paid due tax on the above referred income
- Payer furnishes a CA certificate in prescribed form

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

2.3 Application of Transfer pricing provisions to domestic transactions

Presently an assessing officer is empowered to disallow unreasonable expenditure between related parties⁵. However, the law does not provide for any criteria to determine the reasonableness of expenditure in such cases. While preparing its order in a particular case the Apex Court⁶ held that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions. Such regulations would create a legally enforceable obligation on assesseees to maintain proper documentation in respect of transactions with domestic related parties

In this backdrop the Finance Bill 2012 proposes to make Transfer pricing ('TP') applicable to domestic related party transactions. However, to avoid excessive administrative and compliance burden on all assessee the applicability is proposed to be restricted to cases where the value of transactions exceed monetary limit of Rs. 5 crores in a financial year. The application of TP provisions to specified domestic transactions are proposed to be introduced by making following amendments to existing provisions:

- Scope expanded by covering specified domestic transactions by amending S. 92 of the IT Act 1961
- Specified Domestic Transactions⁷ would include the following Transactions:
 - Expenditure in respect of payments made to persons mentioned in S. 40A(2)(b)
 - Transactions referred to in S. 80A
 - Transfer of goods/ services referred to in S. 80(IA)(8)
 - Business transacted with persons referred to in S. 80(IA)(10)
 - Other prescribed transactions

⁴ Consequential amendments have been made in S. 201(1)

⁵ Section 40A of the Income Tax Act 1961

⁶ CIT Vs. Glaxo Smithkline Asia Private Limited

⁷ New Section S. 92BA introduced

- Provisions of Sec. 92C (Definition of Arm's Length Price), Sec. 92D (Maintenance of Documents/ Records) and Sec. 92E (TP Report from a CA in Form 3CEB) and other provisions in relation there to have been made applicable in the case of specified domestic transactions
- Further, a consequential amendment has been made in S. 40A(2) for non disallowance of expenditure in respect of specified domestic transaction which have been entered into at an arm's length price as defined under Sec. 92F of the IT Act 1961

2.5 Limits for Tax Audits and presumptive taxation increased [S. 44AB, 44AD]

Under the existing provisions of section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceed the specified limit. These limits were raised by the Finance Act 2011. The Finance Bill 2012 proposed to raise these limits further in order to reduce compliance burden. Proposals are tabulated here under:

Category of assessee	Proposed Threshold limit	Existing Threshold limit
Business assessee	100 Lakhs	60 Lakhs
Professionals	25 Lakhs	15 Lakhs

Date of submission of Tax Audit report u/s.44AB has been amended to be aligned with the time of filing of Transfer Pricing Audit Report. Hence, the date of submission of assesses who are liable for TP Audits will now be permitted to complete their Tax Audits by 30th November of the relevant assessment year.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

2.6 Presumptive taxation not applicable to Professionals [S. 44AD]

It has been clarified that the presumptive scheme does not apply to:

- a person carrying on profession as referred to in Sec. 44AA(1);
- persons earning income in the nature of commission or brokerage income;
- a person carrying on any agency business

It is proposed to make the above amendment applicable retrospectively from 1st April 2011 (i.e. AY 2011 – 2012).

2.7 Expansion of scope of Alternate Minimum Tax (AMT) [Chapter XII-BA]

Presently the concept of Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT) are applicable in the case of Companies and

LLP's respectively. In order to widen the tax base vis-à-vis profit linked deductions the provisions, the provisions relating to payment of a minimum amount as TAX is proposed to be made applicable to all persons other than companies. The new legislation has been operationalised by making suitable amendments to provisions contained in Chapter XII-BA (presently applicable to LLP's). Features of the new levy & related provisions are as under:

- Applicable to all persons (other than company) who have claimed deduction under Chapter VI-A (other than S.80P), Sec. 10AA
- An exemption has been provided to certain persons⁸ whose adjusted total income does not exceed Rs. 20 Lakhs
- Adjusted Total Income is to be calculated as under

Particulars	Amount
Total income for the year	XX
Add: Deductions U/C VI-A (other than 80P)	XX
Add: Deduction U/s 10AA	XX
Adjusted Total Income (ATI)	XX

- Where the tax on ATI is less than tax as computed under the normal provisions ATI will be treated as the total income liable to Income Tax
- Income tax @ 18.5% will be payable on such ATI and will be further increased by way of a Cess @ 3% Every person to whom provisions relating to AMT apply shall be required to obtain a CA certificate in prescribed form and furnish the same on before the due date for filing of return U/s 139(1) of the IT Act 1961.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

2.8 Removal of cascading effect of DDT in case of multi tier corporate structure [S. 115-O]

Presently in computing liability to pay Dividend Distribution Tax a domestic company is allowed to reduce the dividend liable for payment of DDT (15%) by the amount of dividend received from its subsidiary provided that such domestic company does not have a parent. Hence, where the cascading effect of DDT is mitigated under

⁸ All persons as defined u/s 2(31) except Local Authority, Firms and Companies

the existing provisions it does benefit a multi-tier corporate structure. In order to remove the cascading effect in such cases the Finance Bill 2012 has proposed as under

Situation	Proposal	Existing provision
The amount of dividend liable for DDT to be reduced by dividend received from subsidiary if	<ul style="list-style-type: none"> Dividend is received from a subsidiary The subsidiary has paid DDT on such dividend as computed under Sec. 115-O 	<ul style="list-style-type: none"> Dividend is received from a subsidiary The subsidiary has paid DDT on such dividend u/s 115-O The domestic company is not a subsidiary of another company

It is proposed to make the above amendment applicable from 1st July 2012.

3. Amendments relating to Capital Gains

3.1 Cost of acquisition in case of transfer by proprietor/ Firms To Company in a scheme of conversion [S. 49]

Cost in the case of non taxable transfers under 47 in the hands of the successor is generally that of the predecessor as per the provisions contained in section 49. Certain transactions like transfer of assets by a sole proprietorship or a firm to a company on conversion are not regarded as transfer⁹. At present there is no reference in the provisions of section 49 with regard to the cost to be taken for such assets while computing capital gains on subsequent sale of such assets by the company.

Accordingly, it is proposed to amend the provisions of section 49 of the Income-tax Act to provide that in such cases the cost of acquisition of asset in the hands of the company would be the same as that in the hand of the sole proprietary concern or the firm, as the case may be.

It is proposed to make the above amendment applicable retrospectively from 1st April 1999 (i.e. AY 1999 – 2000).

⁹ Sec. 47(xiii)/ Sec. 47(xiv) of the IT Act 1961

3.2 Fair Market Value to be consideration in case of uncertainty of consideration [S. 50D]

Capital gains are calculated as sale consideration minus cost of acquisition. In a recent ruling¹⁰, it was held that where there was uncertainty of consideration in case of restricting of an insolvent company the ruling followed the principle laid down by the Supreme Court in the case of *BC Srinivasa Shetty*¹¹ which held that once the computation mechanism under the Act fails no capital gains tax liability arises.

It appears that under this back drop this new legislation provides that in the case of a transfer, consideration for the transfer of a capital asset(s) is not determinable then for purpose of computing gains the fair market value of the asset shall be taken to be the full market value of consideration. Accordingly, it is proposed to insert a new provision (section 50D) in the Income-tax Act to provide that fair market value of the asset shall be deemed to be the full value of consideration if actual consideration is not attributable or determinable.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

3.3 Capital Gains on sale of agriculture Land by HUF [S. 54B]

Presently, Capital gains on transfer of agricultural land which, in the two years preceding the year in which it has been sold, has been used for agricultural purposes by assessee or his parent, is exempt if the whole of capital gains has been reinvested in the purchase of agricultural land in the next two years. It is now proposed that this benefit be also granted to a HUF by amending Sec. 54B of the IT Act 1961.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

3.4 Exemption from Capital Gains on investment in equity shares of new company [S. 54GB]

With the intention of promoting investment in Small and medium enterprises (SME) in the manufacturing sector it has been proposed to provide exemption from Capital Gains under new section 54GB. The intention of the amendment is to provide rollover relief from long term capital gains tax to an individual or an HUF on sale of a residential property (house or plot of land) in case of re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the

¹⁰ AAR Ruling in re Dana Corporation

¹¹ CIT Vs B. C. Srinivasa Shetty 96 ITR 667 (KAR) 1974

purchase of new plant and machinery. The conditions for claiming this relief are as under:

Quantum & nature of investment

- Net proceeds used for subscription of equity shares of an eligible SME company

Time Limit for making investment

- Investment to be made on or before due date for filing return of income

Eligibility criteria for SME Company

- SME Company is incorporated in India in the previous relating to the assessment year in which such exemption is claimed
- The individual or HUF has over 50% voting rights on account of such share subscription or 50% shareholding in the Company
- SME Company in which investment is made must be engaged in manufacture of any article or thing
- SME Company qualifies as a Small or Medium enterprise under the MSME Act, 2006

Utilisation of subscription money by Company

- SME to utilize the subscription money within 1 year from the date of subscription for purchase of new asset/(s)
- New assets are in the nature of plant & machinery, office appliances like computer/computer softwares, any vehicle and plant & machinery eligible for 100% depreciation
- Equity shares subscribed by the assessee or the new asset acquired by the Company must not be sold or transferred in any manner within a period of 5 years

Measures & Consequences of non-utilisation, mis-utilisation or under utilisation

- If the SME Company does not utilise the sums as referred to above in whole or in part (on or before due date of return filing of the Individual/ HUF) the SME Company deposits the unutilized amount in Capital Gains Account Scheme with any bank or institution as may be prescribed by the Central Government
- Where the sums deposited in the capital gains account scheme are not invested by the Company within prescribed time the capital gains exempted in the hands of the assessee will attract capital gains tax
- Where the new asset or the shares are so sold or transferred the capital gains exemption claimed by the assessee will be reversed & made liable to capital gains tax apart from a fresh capital gains tax arising in the case of the Company

Benefits under this provision is available in case of gains arising from transfer of the prescribed property on or before 31.03.2017

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

3.5 Reference to valuation officer [S. 55A]

Under the provisions of section 55A, where in the opinion of the AO value of asset as claimed by the assessee is less than its fair market value ('FMV') he may refer the valuation of a capital asset to a Valuation Officer. Under S. 55 in a case where the capital asset became the property of the assessee before 01.04.1981, the assessee has the option of substituting the FMV as on 01.04.1981 as the cost of the asset. In such a case the adoption of a higher value for the cost of the asset as the FMV, would lead to a lower amount of capital gains.

It is proposed to amend the provisions of section 55A of the Income-tax Act to enable the AO to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the FMV

This amendment will take effect from 1st day of July, 2012

3.6 Reduction in the rate of STT

The Finance Act 2004 introduced the new levy of STT. It has been proposed to reduce the rate of STT. The comparative rates are tabulated here under:

Nature of security	Proposal	Existing rate
Delivery based purchase of equity shares in a company/ units of an equity oriented fund entered into through a recognized stock exchange in India	0.1%	0.125%
Delivery based sale of equity shares in a company / units of an equity oriented fund entered into through a recognized stock exchange in India.	0.1%	0.125%

This amendment will take effect from 1st day of July, 2012

4. Amendments relating to Income from Other Sources

4.1 Definition of 'relative' to include HUF [S. 56]

Sec. 56(2) (vii) says that any sum or property received by an individual or HUF for inadequate or no consideration is taxable. The

receipts from relatives are removed from the purview of this section for individuals since they get covered under the term 'relatives'. It is proposed to amend the provisions of section 56 so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation.

It is important to note here that a gift from the HUF to its coparceners will not be covered as an exempted gift, subject to ceiling limit of Rs.50,000/-, from a relative as far as the individual is concerned.

This amendment will take effect retrospectively from 1st October, 2009

4.2 Unexplained/ excessive share capital/ premium to be taxed [S. 68]

Under the existing provisions unexplained cash credits found in the books of accounts are liable to be treated as income of the assessee. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as share capital, share premium etc.

The present proposal intends to counter situations where any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as unexplained:

- If the source of funds in the hands of shareholder is not explained by the assessee company accepting the capital/ premium amount;
- If in addition to the explanation provided by the Company, the investor fails to explain the source of the funding & the concerned AO is not satisfied by the explanation given by the investor;

Fall out of unexplained credit

The amount of share capital or share premium by whatever name called received by the Company will be treated as income from other sources in the hands of the Company¹².

It is also important to note that the following kinds of investors will be kept out of the provisions of Section 68:

- Non-resident person;
- Venture Capital & Venture Capital Fund

In light of the above, we feel that any closely held company accepting investment in the form of equity participation by whatever

¹² Newly inserted Section 56(viib) makes a specific provision to this effect

name called will have to obtain a written undertaking cum letter from the investor explaining clearly the source of the funds invested & that the explanation given by such person is true and correct.

The apparent intent of this legislation is to curb generation and use of unaccounted money. The proposed amendment will have substantial impact on all private companies since generally in case of Private companies shares are issued at a price higher than the Fair Market Value

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

4.3 Taxation of cash credits, unexplained investments etc [S. 115BBE]

Under the existing provision certain unexplained money credited in the books of assessee are deemed as income of assessee and are subject to tax as per the tax rate applicable to the assessee.

No tax can be levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit in case of Individual/ HUF and even if it is higher, it is levied at the lower slab rate.

In order to control transaction relating to cash credit, unexplained Investments etc. which results in laundering of unaccounted money by taking advantage of basic exemption limit, It is proposed to tax unexplained money @30% (plus surcharge and cess as applicable). No deduction of expenditure shall be allowed in computing deemed Income. It is also important to note that this levy will be over and above the tax that the relevant person is required to pay in the normal course.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

5. Amendments relating to Deduction U/c VI-A

5.1 Condition for deduction in respect of Life Insurance Premium (LIP) paid and Exemption of sum received from LIC [S. 80C/10(10D)]

Under the existing provisions deduction for LIP in excess of 20% of sum assured is not deductible. The cap of 20% is proposed to be reduced to 10% with reference to the sum assured. The provisions would apply to policies issued on or after 01.04.2012.

Consequential amendment is proposed in Sec. 10(10D) to exempt the proceeds if the premium payable for any of the years does not exceed 10% of the actual capital sum assured.

In order to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year, it is also proposed to provide that the capital sum assured would be the minimum of the sum assured in any of the years of the policy.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

5.2 Deduction in respect of expenditure made on preventive health check-up [S. 80D]

Under the existing provision a deduction is allowed U/s 80D in respect of mediclaim premium paid towards a health insurance policy, up to a maximum of Rs.15000 in aggregate. A further deduction of Rs.15000 is also allowed for buying a health insurance policy in respect of parents. It is proposed to amend this section in order to include any payment made by an assessee on account of preventive health check-up not exceeding Rs. 5000/- (No bar about mode of Payment) as eligible for deduction within the overall limits prescribed in the section.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

5.3 Reduction of the eligible age for senior citizens for certain Tax relief [Sec 80D/80DDB]

The Finance Act, 2011 amended the effective age of a senior citizen being an Indian resident from 65 years of age to 60 years for the purposes of tax slabs and rates of tax under the Income Tax Act, 1961 for income earned.

On the similar line, The Finance Bill 2012, proposes to lower the effective age to 60 years in respect of deductions under Sec. 80D, 80DDB and 197A

It is proposed to make the above amendment applicable to Sec 80D and 80DDB from 1st April 2013 (i.e. AY 2013 – 2014).

The amendment to section 197A will take effect from 1st July, 2012.

5.4 Upper cap in case of cash donations [Sec 80G/80GGA]

Sections 80G/ 80GGA of the IT Act, 1961 provide for a deduction in respect of donations. Under the existing Provision there is no specification about mode of Payment. The Finance Bill 2012 proposes to introduce a cap of Rs.10000 in respect of cash donations

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

5.5 Deduction for Savings Bank Interest [S. 80TTA]

The Finance Bill, 2012 proposes to insert a new section 80TTA of the IT Act, 1961 to allow a deduction up to Rs 10000 in respect of Interest income earned by an individual or a Hindu undivided family on deposits (not being time deposit) on saving account opened in their name with Banks, including co-operative banks and Post Office & not being an account opened on behalf of another person like a Firm, AOP or BOI.

It is proposed to make the above amendment applicable from 1st April 2013 (i.e. AY 2013 – 2014).

6. Amendments relating to TDS/ TCS [Chapter XVII-B]

6.1 Threshold limit for TDS on debentures enhanced [S. 193]

The present threshold limits are proposed to be enhanced as under:

Proposal		Existing Provisions	
Listed Debentures	Unlisted Debentures	Listed Debentures	Unlisted Debentures
5000	5000	2500	NIL

This amendment will take effect from 1st July, 2012

6.2 TDS on director remuneration (not being salary) [S. 194J]

Currently, a company is required to deduct tax at the time of payment of salary to its employees including Director. However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary. Provision relating to TDS on Professional Fees (Section 194J) has been proposed to amend and include the remuneration paid to a director, which is not in the nature of salary in this section @ 10%.

This amendment will take effect from 1st day of July, 2012

6.3 Threshold for TDS on consideration received for compulsory acquisition [S.194LA]

A person responsible for paying any compensation or consideration for compulsory acquisition of immovable property (other than agricultural land) is required to deduct Tax @ 10% in case the consideration exceeds Rs.100000/-. This threshold limit has been enhanced to Rs.200000/-

This amendment will take effect from 1st July, 2012

6.4 TDS on transfer of certain immovable properties [S. 194LAA]

Presently TDS provisions are applicable in case of transfer of certain immovable properties under compulsory acquisition. With an intention to collect tax at the earliest point and also to have a reporting mechanism of transactions in the real estate sector following proposals are discussed hereunder:

Nature of Transaction

- There should be a transfer of immovable property;
- The transferee is a resident
- The immovable property must not be an agricultural land;
- The transaction must not be the subject matter of any compulsory acquisition;
- Transfer of immovable of property will take in its ambit any assignment, extinguishment of rights and the like;
- Provision shall apply only if the consideration involved is equal to or greater than–
 - Rs.50 Lakhs (Property in a specified area¹³)
 - Rs.25 Lakhs (Property in any other area)

Rate of TDS & who must deduct

- Purchaser/transferee to deduct TDS @ 1%

Value on which TDS is to done

TDS is to be done by the transferee on higher of the following:

- The full value of consideration; or
- The value adopted or assessed by the registering authority for the purpose of payment of stamp duty;

Consequences of non-compliance

- If the said TDS is not done then the registering officer shall not register the property

General procedures prescribed & reliefs granted in relation thereto

- The transferee shall do TDS as referred to above & pay the amount so deducted in a simple one page challan containing details (including PAN) of transferor and transferee and also certain details of the property
- No TAN or compliance relating to TDS statement will be required
- Seller shall get credit of the TDS while filing return of income

This amendment will take effect from 1st October, 2012.

¹³ Specified area is defined to cover major metro cities & district areas of major cities

6.5 TCS on cash sale of bullion/ jewellery [S. 206C (1D)]

Under the existing provisions of the Income-tax Act, tax is required to be collected at source by the seller at the time of sale of certain specified goods¹⁴. It is proposed to apply these provisions in the case of Sale of bullion and jewellery¹⁵ @ of 1% of sale consideration from every buyer of bullion and jewellery if the following conditions are satisfied:-

- Sale consideration exceeds two Lakhs
- The sale is in cash.

This amendment will take effect from 1st July, 2012.

6.6 TCS on sale of certain Minerals [S. 206C (1)]

Under the existing provisions of the Income-tax Act, tax is required to be collected at source by the seller at the time of sale of certain specified goods¹⁶. Finance Bill 2012 proposes to add coal, lignite and Iron ore to the existing list of goods @ 1%.

These provisions shall not apply if the same are purchased by the buyer for personal consumption or for the purpose of manufacturing, processing or producing articles or things.

This amendment will take effect from 1st July, 2012.

6.7 Concept of Late fee introduced for quarterly TDS/ TCS statements [S. 234E/ 271H/ 272A/ 273B]

Existing provisions relating to filing of quarterly TDS/ TCS statements makes it obligatory on the part of the deductor to furnish these statements within prescribed time limit after the end of each quarter. Delay in filing these statements consequently delays the grant of credit of the TDS/ TCS to the deductee. Presently, such delays attract penalty¹⁷ under the provisions of Sec. 272A of the IT Act 1961. However, a substantial number of deductors are not furnishing these statements within the prescribed time limit. As a measure of rationalization the existing penal provisions are being proposed to be substituted with the concept of late fees as enumerated here under. Consequently penal provisions are proposed to be deleted.

Nature of default	Proposals		Existing provision	
	Late Fees	Penalty	Late Fees	Penalty
Delay in filing of	Rs. 200/-	Rs. 10000 –	NA	Rs. 100/-

¹⁴ Certain Specified goods are Alcoholic Liquor, Tendu Leaves, and Scrap

¹⁵ The new levy has been introduced by inserting S. 206C (1D)

¹⁶ Alcoholic liquor, Timber, any other forest produce, scarp

¹⁷ Penalty of Rs. 100/- per day from the due date till the of furnishing of the statements (max penalty not to exceed the TDS payable)

statements	per day U/s 234E	100000 U/s 271H		per day U/s 272A(2)
	(not exceeding amount of TDS/ TCS)	(No penalty if Late fee + Int. paid and statement filed within 1 year)		(not exceeding amount of TDS/ TCS)
Furnishing incorrect information	of	NA	NA	NA
		/ (No penalty if reasonable cause exists u/s 273B)		

These amendments will take effect from 1st July, 2012

Due date chart for filing quarterly TDS/ TCS statements (for ready reference)

Quarter	24Q/26Q/27Q
Q1	15 th July
Q2	15 th October
Q3	15 th January
Q4	15 th May

6.8 Withholding Taxes on Royalties [S. 9]

Presently, payments of 'Royalty' to both, resident and Non Resident attract a withholding of 10%. It is known that the term Royalty has been popularly a subject matter of dispute. Provisions of Sec. 9 of the Income tax Act 1961 deal with income deemed to accrue or arise in India. The Budget has introduced clarificatory explanations to be inserted in S. 9(1)(vi) which aim at bringing within the tax ambit payments made for right to use various computer softwares¹⁸, online databases, etc. These payments have been a matter of dispute before various judicial foras in India in the past.

The proposed amendment seeks to clarify that the term 'royalty' always included the right to use computer software irrespective of the medium through which such right is transferred. This implies that right for using or right to use computer softwares like online databases, softwares supplied on media or embedded software would be covered under by term 'Royalty' and hence become income deemed to arise in India. Consequently, the person making payment for such right becomes liable for withholding taxes.

These explanations have been inserted retrospectively w.e.f. 01.06.1976

¹⁸ Explanation III to S. 9(1)(vi) of the IT Act 1961 defines a computer software - "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data"

6.9 Amendments relating to Assessment procedures

The existing period and the new extended period for completion of pending proceedings and subsequent proceedings under these provisions is given below:

Section Reference	Current time Allowed	Proposed Time Limit
143	21 months from the end of the A.Y.	24 months
143 & 92CA	33 months from the end of the A.Y.	36 months
148	9 months from the end of the F.Y. in which notice issued	12 months
148 & 92CA	21 months from the end of the F.Y. in which notice issued	24 months
250 or 254 or 263	9 months from the end of the F.Y. in which order received	12 months
250 or 254 or 263, and 92CA	21 months from the end of the F.Y. in which order received	24 months

6.10 Conclusion

The disturbing trend in this Budget is the concerted effort made to negate any judicial pronouncements which are adverse to the revenue. The retrospective amendment in relation to the taxation of indirect transfer of shares (the Vodafone judgment), and, the royalty issues in relation to software are the most stark examples of the Legislature thumbing its nose at the Judiciary

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PART II - SERVICE TAX – PRESENT LEVY

EXECUTIVE SUMMARY

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2.1 Introduction

While presenting the last budget the Finance Minister proposed that it would be desirable to tax services on the basis of a small negative list so that many untapped sectors are brought into the net of taxation and also would be very conducive for a nationwide GST regime¹. Subsequently an informal public debate was initiated on widening the tax base by introducing such a move. Pursuant to the debate the Finance Bill 2012 proposes to introduce a negative list approach of taxation of services and new provisions are proposed to be introduced accordingly

A Glance of changes proposed are enumerated below:

- ❖ Paradigm shift - Taxation of Services on the basis of negative list
- ❖ Basic Rate of Service Tax increased from 10% to 12%
- ❖ Consequent changes have been made in Composition rates
- ❖ POT Rules 2011 have been amended
- ❖ Amendments have been made in relation to recovery of Service Tax and Appeals
- ❖ One time penalty waiver in case of renting of immovable property services
- ❖ CENVAT Credit Rules 2004 have been amended
- ❖ Other procedural changes

2.2 Paradigm shift - Taxation of Services on the basis of negative list

Budget 2012 proposes a paradigm shift in the manner services will be taxed in future. Hence, the change involves a shift from the existing service-specific taxation of Services. Under the proposed new regime all services will be taxed unless they are either covered under the negative list or are otherwise exempted under a notification thereby avoiding the complex issues relating to classification of services.

Owing to vast changes proposed under this new system, the changes are elaborated in a separate Part III of this compilation.

2.3 Rate of Service Tax increased²

The rate of service tax is proposed to be increased from present 10.30% to 12.36%³. The new rate shall be applicable from 01-Apr-2012

¹ GST network to be operational from August 2012

² Notification 08/2009 which provided for the reduced rate of 10.30% has been rescinded vide Notification 02/2012-ST, dated 17-03-2012 w.e.f. 01.04.2012

2.4 Changes in Composition Rates of Service Tax

With the increase in basic rate of Service Tax consequent changes have been made in the rates of Composition available to various services. These changes have been summarized here under. Changes effective from 01-Apr-2012

Category of Services	Existing provisions	Proposed amendments
Life Insurance Services ⁵	1.5% of Gross premium charged ⁴	3% for first year premium and 1.5% in subsequent years ⁵ Full CENVAT Credit shall be allowed
Money Changing Services ⁶	Ex. Amt up to Rs. 1 Lakhs – 0.1% (Min Rs.25) Ex. Amt > Rs. 1 but < 10 Lakhs – 0.05% (Min Rs.100) Ex. Amt > Rs. 10 Lakhs – Rs 550 + 0.01% (Max Rs.5000)	Ex. Amt up to Rs. 1 Lakhs – 0.12% (Min Rs.30) Ex. Amt > Rs. 1 but < 10 Lakhs – 0.06% (Min Rs.120) Ex. Amt > Rs. 10 Lakhs – Rs 660 + 0.12% (Max Rs.6000)
Lottery Services ⁷	Guaranteed prize payout > 80% - Rs.6000 for every Rs. 10 Lakhs (or part thereof) of face value Guaranteed prize money < 80% - Rs. 9000 for every Rs. 10 Lakhs (or part thereof) of face value	Guaranteed prize payout > 80% - Rs.7000 for every Rs. 10 Lakhs (or part thereof) of face value Guaranteed prize money < 80% - Rs. 11000 for every Rs. 10 Lakhs (or part thereof) of face value
Works Contract Services	4.12% ⁸ of contract value	4.944% ⁹ of contract value

³ Including applicable Secondary Cess and Higher Secondary Cess

⁴ Rule 6(7A) of the Service Tax Rules 1994

⁵ Rule 6(7A) read with Notification No. 03/2012-ST, dated 17-03-2012 clause 4

⁶ Rule 6(7B) of STR read with Notification No. 03/2012-ST, dated 17-03-2012 clause 4

⁷ Rule 6(7C) of STR read with Notification No. 03/2012-ST, dated 17-03-2012-clause 4

⁸ Including applicable Primary and Secondary Cess

⁹ Notification No. 10/2012-ST, dated 17.03.2012 w.e.f. 01-Apr-2012

2.5 Amendment in Point of Taxation Rules 2011¹⁰

One of the major changes made by Budget 2011 was the introduction of POT Rules 2011. The basic aim of these rules is to:

- Shift from cash system of payment of Service Tax to accrual system
- Define at the relevant date for determining the rate of tax

The amendments proposed by the Finance Bill 2012 are tabulated in the table hereunder and they shall be effective from 1-Apr-2012.

Reference to provision	Proposed	Existing	Comments
Rule 3(a) of POT Rules 2011	30 days <i>(45 Days for banking industry)</i>	14 days	Since Rule 4A which makes it mandatory to issue Invoice within specified time period is amended a consequential amendment is made in the POT Rules amended ¹¹
Rule 2(c) - Definition of continuous supply services	New definition – Service provided continuously/ on a recurrent basis with the obligation for periodic payments	Any service provided continuously for a period > 3 months under a contract	The aim is to cover the concept in a more wholesome manner. However, the term <u>recurrent basis</u> has not been defined and may create issues.
Rule 5 - Point of taxation in case of new services	No Tax if invoice issued within 14 days of the service becoming taxable	For time period for issue of Invoice reference is made to Rule 4A	POT Rules for levy of tax on new services do not give benefit of additional time limit of 30 days as amended in Rule 4A of the ST Rules There is no clarity on applicability of Service Tax if invoice is issued prior to applicability but

¹⁰ Notification No. 04/2012-ST, dated 17-03-2012 w.e.f. 01-04-2012

¹¹ Rule 3(a) of the POT Rules 2011 substituted

Part II Service Tax – Present Levy

Reference to provision	Proposed	Existing	Comments
			amount against such invoice is not received
<i>New Rule 2A inserted – Def. “Date of Payment”</i>	In various situations ¹² POT is decided with reference to date of payment. It has been now provided that “Date of payment” shall be the date of actual credit to the bank account in cases where the instrument is realized > 4 days subsequent to change in rate or new levy		This amendment shall not impact situations where POT is with reference to Invoice date. It would be advisable for assesseees to bank all instruments up to 31.03.2012 so that they are realized within the stipulated time period of 4 days. Else it would attract higher rate of Tax
<i>New Rule 8A inserted – Best judgment POT</i>	A residual Rule is inserted to empower CE Officer to arrive at the POT on best of his judgment after giving a hearing to the assessee	NA	NA
Rule 7 – POT in case of specified services/ persons Amendment to Rule 6 of ST Rules 1994 - Payment of Service Tax	Rule relating to cash system of ST payment in respect of specified persons has been shifted to ST Rules and has been extended to all individual/ firms (+	Cash system of ST payment is applicable in following cases: 1. Exports 2. Specified persons 3. Reverse charge mechanism under the POT	The earlier service specific benefit of payment of ST on cash basis has been made turnover specific more so with the intention to move towards the negative list regime

¹² As depicted under Rule 4 of the POT Rules 2011

Reference to provision	Proposed	Existing	Comments
	LLP's) up to a taxable turnover of Rs. 50 Lakhs POT for reverse charge mechanism remain the same ¹³		

2.6 Amendments relating to recovery of Service Tax and Appeals under the Service Tax Law

[Amendments to be effective from date of enactment of the bill]

The provisions relating to recovery of short paid tax or excess refund are proposed to be amended as under:

Proposals of the Finance Bill 2012	Remarks
Period of issuance of Show Cause Notice is proposed to be increased from the present period of 12 months to 18 months	This would benefit the revenue in terms of larger time frame in cases where extended period of 5 years cannot be applied
New sub-section (1A) is proposed to be inserted to deem follow-up letters shall be deemed to be a SCN if the grounds are same	This implies that if a SCN has been issued for a particular period any follow up on similar demands in subsequent period based on same ground contained in the earlier period SCN shall be deemed to be SCN issued under the Law. This would have an added benefit of removing redundancy
Reference of S. 73(3) is proposed to be omitted in S. 73(4A) so that the latter section does not have an overriding effect on the former	<ul style="list-style-type: none"> At Presently S. 73(4A) provides for mandatory penalty of 1% per month¹⁴ during the period of default if the <u>additional liability</u> for payment of Service Tax arises as a result of an <u>audit</u>/ investigation. Further, S. 73(3) provides for non

¹³ New Rule 7 substituted for the existing Rule – references to exports and specified persons deleted

¹⁴ Maximum penalty 25% of the tax amount

Proposals of the Finance Bill 2012	Remarks
	<p>levy of penalty in case where the Tax along with interest¹⁵ is paid before issue of notice</p> <ul style="list-style-type: none"> • In case of demands consequent to audit/ investigation the penalty is automatic since 73(4A) has an overriding effect. • It is now proposed to apply provisions of non levy of penalty to such cases (only where there is no suppressions, etc)
<p>Time limit for filing appeals to Commissioner (Appeals) reduced [S. 85]</p>	<ul style="list-style-type: none"> • In order to harmonise the appeal provisions with the Excise Law the <u>time limit</u> for filing an appeal before the Commissioner (Appeals) has been reduced from 3 months to 2 months • The provisions will <u>apply to</u> appeals to be filed in respect of orders passed on or after these provisions get enacted • Further, power of the Commissioner for <u>condonation</u> of delay in filing the appeal has also been reduced from 3 months to 1 month
<p>Statutory period for Departmental Appeals Raised [S. 86]</p>	<ul style="list-style-type: none"> • AT present the <u>time limit</u> for <u>Departmental Appeals to the CESTAT</u> is 3 months. It is proposed to <u>increase</u> this time limit to 4 months • <u>Time limit</u> applicable to the <u>assessee</u> continues to be 3 months

2.7 Penalty Waiver for renting of immovable property service

[Amendments to be effective from date of enactment of the bill]

Service Tax on renting of immovable property has faced a long battle right from the year of introduction. Chronology of the various litigations are summarized as under

- Proceedings filed in the Delhi high court in 2008, after the first amendment to the law in 2007, which spoke of only “services in relation to renting of immovable property”

¹⁵ Under Section 75 of the Finance Act 1994

- Delhi HC in 2009 held that service tax was not payable on renting as it was not a value-added service.
- The Centre quickly brought out an amendment in 2010 to clarify that the tax was on renting of commercial property.
- The 2010 amendment was under challenge as it would also have retrospective effect since 2007. The main argument that the developers made was that tax department was misinterpreting the entry of taxable service under Section 65 (105) (zzzz) of the Finance Act. They argued that there was “no service involved in renting premises”. But the HC held that service was involved. It held that levying service tax was no infringement on fundamental rights, and that the Center did have the power to levy such a tax

Against the above backdrop, it is proposed that penalty may be waived for those taxpayers who pay the service tax due on the renting of immovable property service (as on the sixth day of March, 2012), in full along with interest within six months from the date the Finance Bill 2012 receives the assent of the President. Section 80(2) is being introduced for this purpose. This would imply that those who fail to avail the benefit will be treated as if this section did not exist.

2.8 Amendments to CENVAT Credit Rules 2004¹⁶

2.8.1 Provisions relating to CENVAT in respect of Capital Goods amended [Effective 01-04-2012]

Under the existing definition of the term “capital goods¹⁷” Motor Vehicles are not capital goods for the purpose of ‘manufacture’. However, credit for Motor Vehicles is available in case of certain specified services¹⁸. In all other cases of service providers the CENVAT is not available on capital goods being motor vehicles. In this regards following changes are proposed by amending the definition of ‘capital goods’:

- Manufacturers have been allowed to avail CENVAT Credit of duty paid on Motor Vehicles not covered under specified headings¹⁹. The intention behind this amendment is to liberalize

¹⁶ Notification No. 18/2012-Central Excise (NT), dated 17-03-2012

¹⁷ Rule 2(a)(B) of the CENVAT Credit Rules 2004

¹⁸ Courier, Tour operator, Rent-a-Cab, Cargo Handling, GTA, Outdoor catering and Pandal & Shamiana contractor

¹⁹ Manufacturers not allowed CENVAT in respect of Motor Vehicles covered under headings – 8202, 8703, 8704 and 8711

the benefit CENVAT Credit in respect of capital goods being motor vehicles used by manufacturers

- CENVAT Credit in respect of motor vehicles (being capital goods) in respect of specified service providers shall be restricted to those covered by headings 8702, 8703, 8704 and 8711 and their chassis
- Under the existing provisions contained in CENVAT Credit Rules²⁰ 2004 credit of inputs and capital goods can be claimed only after the goods are brought to the premises of the output service provider. The relevant Rules are proposed to be amended to allow the credit whenever the goods are delivered to the service provider.

Capital Goods removed after use – Position up to 16.03.2012

- Under the existing provisions²¹ when capital goods are removed as such and CENVAT was claimed on such goods the duty has to be discharged as under:
 - If the goods are sold as scrap duty to be paid on transaction value (i.e. scrap value)
 - If the capital goods are sold as second hand goods an amount equal to CENVAT Credit availed *minus* 2.5% per quarter from the date of availing the credit should be paid.

Capital Goods removed after use – Present position w.e.f 17.03.2012

- It is now proposed that the reversal has to be done by calculating higher of the following two amounts:
 - Reversal amount calculated on depreciated value (as above);
 - Duty calculated on the transaction value

2.8.2 Definitions of Input Service amended [Effective 01-04-2012]

CENVAT Credit in respect of services in relation to Motor Vehicle are not admissible as 'input service'²² when the underlying motor vehicle is not 'capital goods' within the meaning of S. 2(a) of the CENVAT Credit Rules 2004 In this regards following is proposed:

²⁰ Rule 4 of the CENVAT Credit Rules 2004

²¹ Rule 3(5)/ 3(5A) of the CENVAT Credit Rules 2004

²² Sec. 2(l) of the CENVAT Credit Rules 2004

- Presently, CENVAT Credit in respect of certain specified services is not available in general. As an exception they are available in cases where the motor vehicle is allowed as capital goods [S. 2(a) of CCR]. A comparative table describing the proposed amendments vis-à-vis the existing position is as under:

Category of Service	Proposed	Existing
Insurance Services [S. 65(105)(d)]	Not allowed	Allowed
Rent-a-cab Services [S. 65(105)(o)]	Allowed	Allowed
Repairs & Maintenance [S. 65(105)(zo)]	Not allowed	Allowed
Supply of Tangible Goods Services [S. 65(105)(zzzzj)]	Allowed	Allowed

- Further, it has been proposed to provide that the CENVAT Credit in respect of Insurance Services²³ and Repairs & Maintenance Services²⁴
 - Manufacturer of motor vehicle
 - Insurance company in respect of vehicles insured by it

2.8.3 Refund of excess CENVAT Credit by exporters [Effective 01-04-2012]

Presently, under CENVAT Credit Rules 2004²⁵ an exporter of goods or services needs to first utilize the CENVAT in respect of inputs or input services towards discharging liability towards duty/ service tax on local business operations. In case such adjustment is not possible such person can claim a refund of excess CENVAT under this Rule. The procedures, conditions and compliances in this respect have been laid down by the Government²⁶. The Finance Bill 2012 proposes to simply the refund under Rule 5 of the CCR and accordingly has substituted the existing Rule. The new Rules broadly provides as under:

- The refund is to be calculated in the ratio of export turnover from goods and services to total turnover.
- Export turnover for goods is the value of goods cleared during the relevant period, and exported

²³ Sec. 65(105)(d) of the Finance Act 1994

²⁴ Sec. 65(105)(zo) of the Finance Act 1994

²⁵ Existing Rule 5 of the CENVAT Credit Rules 2004

²⁶ Notification 5/2006-CE(NT), dated 14.03.2006

- Export turnover for services is based on the services completed during the relevant period, i.e. payments received in the relevant period + prior advances for services completed in that period – advances for services not completed in that period.
- Total turnover is the sum of turnover from all excisable goods cleared (exempted, dutiable or exported), all services provided and any inputs removed as such.
- This ratio is applied to the net CENVAT credit which is the credit of inputs and input services less any reduction under Rule 3(5C).
- Export service has been separately defined and is to be determined per the Export Rules, but irrespective of whether payment has been received.
- Value of services is to be determined per Rule 6(3) and Rule 6(3A).
- Refund is not available if benefit of drawback / rebate has been availed.
- The new refund scheme applies to export made on or after 01.02.2012. Refunds under the old rule may be claimed within 1 year from the commencement of the new rule.

2.8.4 CENVAT in case of both exempted & taxable activities [Effective 01-04-2012]

In situations where the manufacturer or service provider is involved in both taxable and exempt activities the CCR²⁷ requires one-to-one identification of inputs with the outputs. In cases where such records cannot be maintained the assessee may be 5%²⁸ of the value as duty/ tax as the case may be.

With a 20% increase in the basic rate of Service Tax this Rule is also amended and the rate of 5% is enhanced to 6%

²⁷ Rule 6(2) of the CENVAT Credit Rules 2004

²⁸ Rule 6(3) of the CENVAT Credit Rules 2004

2.8.5 Interest on incorrect availment of CENVAT Credit [Effective 17-03-2012]

Under the CENVAT Rules 2004 availment of Credit and utilization of the credit availed are two separate events. CENVAT Credit Rules provides that where CENVAT Credit has been taken or utilized erroneously it has to be reversed along with interest. The word “OR” in the Rules was a point of litigation wherever the credit taken is not utilized.

In various judgments²⁹ it has been consistently held that no interest is payable where the credit taken has not been utilized. However, in a latest decision³⁰ the Apex Court has held that since the rule required payment of interest if credit is taken *or* utilized wrongly, interest would also be payable if credit is only wrongly taken.

The Rule has now been amended and the word “OR” has been replaced by the word “AND”. Accordingly interest provisions shall get triggered only if the wrongly availed Credit has also been utilized.

2.8.6 Reversal of CENVAT Credit in case of services provided to units in SEZ [Effective retrospectively w.e.f. 10-02-2006³¹]

In the last budget, sub-rule 6A was inserted under rule 6 of the CENVAT Credit Rules, 2004 to protect the service providers located in the Domestic Tariff Area from the reversal of CENVAT credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule 6A is being given retrospective effect from 10.02.2006

2.9 Other procedural changes

[Unless specified these amendments shall be effective from date of enactment]

Amendment	Description		
Self adjustment of excess Service Tax	Conditions for self adjustment of excess Service Tax paid	Proposed	Existing

²⁹ CCE Vs Bill Forge Private Limited [2011-TIOL-799-KAR], CCE, Delhi Vs Maruti Udyog Limited [2007 (214) ELT 173 (P&H)]

³⁰ Union of India Vs Ind-Swift Laboratories Limited [2011-TIOL-21-SC]

³¹ Clause 144 of the Finance Bill 2012

Amendment	Description			
paid ³² [Rule 6(4A) and 6(4B) of the ST Rules]	<ul style="list-style-type: none"> Issues of Interpretation, classification, Valuation and applicability of exemption not involved 	<table border="1"> <tr> <td data-bbox="866 201 982 313">√</td> <td data-bbox="982 201 1094 313">√</td> </tr> </table>	√	√
√	√			
	<ul style="list-style-type: none"> In case of Centralised Registration self adjustment allowed without limit for want of receipt details from branches 	<table border="1"> <tr> <td data-bbox="866 313 982 455"></td> <td data-bbox="982 313 1094 455">√</td> </tr> </table>		√
	√			
	<ul style="list-style-type: none"> In cases other than above maximum limit for self adjustment Rs. 2,00,000³³ 	<table border="1"> <tr> <td data-bbox="866 455 982 539"></td> <td data-bbox="982 455 1094 539">√</td> </tr> </table>		√
	√			
No prosecution for non issuance of Invoices [S. 89 of the Act]	<ul style="list-style-type: none"> Under the existing provisions³⁴ offences liable for prosecution include non-issuance of invoice or receipt of service without an invoice. As proposed non issuance of invoice shall not tantamount to a punishable offence. However, under the proposed amendment intentional evasion of Service Tax has been proposed to be made a punishable offence. This amendment appears to be of very wide import and may have far reaching effects 	<table border="1"> <tr> <td data-bbox="866 596 982 876"></td> <td data-bbox="982 596 1094 876">√</td> </tr> </table>		√
	√			



³² Rule 6(4A) of the Service Tax Rules 1994 [w.e.f. 01.03.2007]

³³ Substituted for Rs. 1,00,000/- w.e.f. 01.04.2011

³⁴ Section 89 of the Finance Act 1994 re-introduced by Finance Act 2011 w.e.f. 08.04.2011

PART III - SERVICE TAX – PROPOSED LEVY

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1. Introduction

Sweeping changes have been brought about by Budget 2012 in relation to Service Tax.

1.1 Present Service Tax Regime

Presently, service tax is governed by the provisions of Chapter V of the Finance Act, 1994 ('the Act'). One is liable to pay service tax on provision of a taxable service in India to another person for consideration. In certain cases service tax is payable by the recipient of services rather than the provider of services. One of the most important aspect of the present regime is that only specified services are liable to service tax. In other words the present regime taxes only selected services notified from time to time by the Central Government. At the moment there are over 119 services that are treated as taxable services.

1.2 New Proposed Regime

Today services contribute 59% to India's National Income. The revenue generated by the Central Government from services is not commensurate when compared to the contribution of Services to the National Income or GDP. Simply put, there is a proposal to substitute the present levy by a new proposed levy where all the services will be taxable except for the ones that are included in the negative list. In other words, the new scheme will simply define services that are excluded from the levy or are exempted or are specifically included. The new provisions will also be contained in the Act as referred to in the above paragraph. As a contrast to the present scheme where only specified services are taxable, the proposed scheme will be one where only specified services are not taxable. The former method is generally referred to as the Positive approach for taxation of services & the latter is referred to as the Negative approach for taxation of services.

1.3 Need for a Negative approach to tax services

Under the much anticipated Goods & Services Tax the aim would be to tax all goods and services except when specifically exempted or excluded. At the moment, there is a lot of overlapping when it comes to supply of goods and services in the present digitized business environments & changing business scenarios. This has led to several litigations on matters relating to what is goods and what is a service, whether a transaction amounts to providing a specific service, etc. The aim of the negative approach is to reduce these disputes between the revenue authorities and the service providers or recipients. But it must be borne in mind that the negative list will have to be kept as tight and as short as possible by the legislators otherwise there could be several

disparities and arguments over taxability of a particular service from time to time.

2. Limitation on Coverage

It is practically impossible to digest every nitty-gritty of a completely renewed Service Tax legislation. Every attempt has been made to clarify the logical flow & relevant interpretations connected therewith. In that we have attempted to give you a fair picture of the way in which the new provisions would span out.

3. Relevant Compare & Contrast of Statutory Provisions

Basic Provision	Present Provisions	Proposed Provision
Definition of relevant terms	Section 65	Section 65B
Classification of Services	Section 65A	Section 66F
Charging Section	Section 66 & Section 66A	Section 66B
Negative List of Services	No such provision as only selected services are taxable in nature	Section 66D providing for list of all services that will be excluded from the levy of service tax
Services Declared as Taxable	Mainly governed by section 65(105)	Section 66E
Export & Import of Services	Section 65(105) read with Export & Import Rules	Section 66B read with Service Tax Rules and Place of Supply Rules

4. Effective Date of new provisions

The new provisions relating to “Taxation of Services based on Negative list” will be effective from the **Date to be Notified** by the Central Government in this regard.

5. Effective Tax Rate

5.1 What will be the Service Tax Rate under the proposed levy?

Taxable value of services will attract service tax @ 12.36% for the time being. This rate of tax is prescribed u/s.66B of the Act.

6. Incidence of Service Tax

6.1 When will service tax be chargeable or payable?

Section 66B of the Act will be the charging section that will determine the incidence of service tax. Based on the said provisions one can deduce that Service tax is chargeable or payable:

1. When the activity performed or undertaken amounts to ‘Service’;
2. The service is not excluded from service tax under the negative list of services;
3. Service is provided by one person to or for another;
4. Service is provided in the taxable territory.

Once the criteria given above are satisfied it will be relevant to identify whether the service is:

1. A Declared Service; or
2. An Exempted Service

We will be taking up each of the above aspects separately herein below.

7. What is meant by “Goods” under the proposed levy?

Definition of Goods

Before we set out to understand what is meant by services it will be relevant to note as to what is “Goods” for the purposes of the proposed levy. One will have to make the differentiation between goods and services at various points in determining the service tax liability under the proposed levy. Goods have been redefined by the proposed levy as under:

“Goods”¹ means every kind of movable property other than actionable claim and money and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The above definition is similar in its understanding when compared to the present position except for the widening of the ambit of stocks and shares to Securities of all kinds as defined under the Securities Contract Regulation Act. This change will be elaborated further after definition of service is well understood.

8. What is meant by “Services” under the proposed levy?

8.1 Definition of Service

Generally, a Service is understood as “anything that does not constitute goods, money, actionable claims and immovable property”.

The legislators have so far never attempted to define what is meant by a service. Under the proposed legislation “Service” has been defined u/s.65(44) & specific inclusions & exclusions have been made thereunder.

¹ Defined u/s.65B(24)

Based on the said provisions one can deduce that the essential ingredients for anything to be treated as a Service are-

1. **There should be some “Activity”:**

Apart from the general understanding of the term Activity, it will include forbearance or tolerance to act at all or in a certain manner. For example: Cases where there is an agreement of non-compete there is an agreement to act in a certain way. This will be treated as an activity.

2. **There should be flow of “Consideration”:**

As it is well understood that consideration can either be monetary in nature like cheque, cash, bill of exchange, etc. or non-monetary in nature like barter. Hence, if Mr.A performs a certain activity in return of certain activity performed by Mr.B for Mr.A, it will be deemed that there was flow of consideration between Mr.A & Mr.B even though there was no actual money movement between them. Deemed consideration like in the case of free of cost of services is also consideration for this purpose.

3. **Activity should be “Carried out by a person for another”:**

Explanation to Section 65B (44) has clarified this & in light thereof one can make the following inferences:

Provider-Recipient or deemed Recipient relationship

It is only when an activity is performed for another person, who is a recipient, that it takes the nature of service. It is also proposed that activities performed on instance of another person are also covered. For example: Oracle India Ltd. designs and implements an ERP for an Indian Subsidiary of a UK Company. The consideration for the said services is paid by the UK Holding Company. The Indian Subsidiary Company will be treated as the deemed recipient for the purposes of this service.

Self Service

Under the service tax legislation self service is not a service at all. For example: branch in Kolkata is performing marketing services within the North Eastern regions of India for its Head office in Mumbai. The activity in this case is not carried out by a person for another.

Cases where Self Service is a Service

The new legislation has clarified that activities undertaken between establishment of the same person in taxable & non-taxable territory will constitute a service. For example: branch in Kolkata is performing marketing services within the North Eastern regions of

India for its Head office in Dubai. The activity in this case is carried out by a person for another.

Specific Inclusions

“*Declared service*”² is specifically included as a service. There are certain activities that have been specifically declared as a service and they are covered later in this note.

Specific Exclusions

All of the following activities are not a service at all to the extent that they constitute & are limited to:

1. Mere sale, gift or transfer by whatever name called of-
 - (i) goods; or
 - (ii) immovable property
2. Transaction only in-
 - (i) Money - for example: bank deposits/withdrawals, conversion notes to coins, receipt & repayment of Loan Principals; or
 - (ii) actionable claim – for example: right to participate in a lottery draw;
3. Any activity performed by an employee for its employer in the course of the employment;
4. Activities performed by a court or a tribunal for a fee.

8.2 Complex issues surrounding the definition of Goods & Services

A list of indicative issues (and by no means an exhaustive list) has been picked to bring out the essence of the manner in which the proposed levy will deal with particular scenarios.

8.2.1 Whether mere sale & purchase of Securities is a service?

No. This is not a service as Securities have now been treated as goods and sale of goods does not constitute a service. For example: share buy-back offer by a Company will not be a service provided to the shareholders. Similarly, private equity investment by a foreign investor is not a service.

8.2.2 Whether services of a broker in relation to sale & purchase of securities is a service?

Yes. Services rendered to investors in facilitating the trading of Securities will be a service.

² Defined u/s.65B(22) of the Act

8.2.3 Whether resale of premises is a service?

This is beyond doubt a question that has led to very many debates in the past and the same are not likely to settle too soon. Sale of premises merely by way of transfer of title after receiving a completion certificate from the relevant authority and where the entire consideration is received only thereafter, is not a service. Hence, one can be certain that a sale or resale of ready to use premises will not be treated as an activity that will attract service tax as it is a mere transfer of title.

8.3 Broad Categories of Service

Services can be broadly understood as divided in the following categories:

- 8.3.1 Exempted Services;
- 8.3.2 Excluded Services or Services in the Negative List;
- 8.3.3 Declared Services;
- 8.3.4 All other services that are not covered in A, B & C above.

8.3.1 Exempted Services³

With powers conferred to the Central Government under the Act there will be a single Mega Exemption Notification No.12/2012 dtd.17.3.12 on Exempted Services. An overview of the said exemptions is given hereunder:

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
Services to Specific Organisations	Services provided to specified organizations like WHO, IMF, Asian Development Bank and the like.	
Healthcare services & R&D in medicine	<ul style="list-style-type: none"> i. Exemption to healthcare services are restricted to recognized system of medicine like allopathy, homeopathy, ayurveda, etc. when provided by qualified professionals or organizations thereof. ii. Exemption is also provided to veterinary clinics iii. R & D in medicine for new drugs where 	

³ Notification No.12/2012-ST dtd.17.3.12 effective from the date on which Section 66B comes into effect

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
	human trials are used as part of the R & D.	
Charities for Charitable activities	i. Services provided <u>by</u> a Trust or NGO for charitable purposes/activities. ii. Services provided <u>to</u> a Trust or NGO for charitable purposes/activities.	For example if a Trust has a Jaipur Foot camp for handicap persons the service provided to them is exempt.
Religious purposes	Services in relation to: i. Renting of precincts for religious purposes; ii. Conduct of religious ceremony.	
Services by an Individual advocate or an Arbitral tribunal	Exempted only when provided to non-business entity.	For example individual advocate pleading in the case of a family settlement case will be exempted
Training & Coaching in field of Art & Culture		For example: Activities like teaching of Kathak or Bharatnatyam will be exempted
Training, Coaching & other services in field Sports	i. Services of an umpire, referee, player, coach, manager to a recognized sports body (RPB); ii. Sponsorship to any specific sports bodies; iii. Other training & coaching services iv. Services from RPB to another	For example: A Cricket camp organised for coaching by BCCI
Sponsorships	Sponsorship of tournaments or championships organised by specified persons	Specified persons include sports federations, Indian Olympic Association, etc.
Education	Services provided to an educational institution by way of: i. Catering services under mid-day meals programme of the government; ii. Transportation services	If one reads the negative list & this exemption notification together there seems to be a clear move to keep schools, colleges,

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
	<p>of students & staff;</p> <p>iii. Services in relation to admission to any stream of education.</p>	<p>recognized educational institutions & the like out of the service tax net as it is at present.</p>
<p>Construction including maintenance & repair in all forms</p>	<p>i. Specified services provided to Government & provincial Authorities (like construction of Government hospitals, historical monuments, civil structures, drains etc.)</p> <p>ii. Services provided for constructions of general public use like roads, bridges, airports, ports, crematoriums, places of worship etc.</p> <p>iii. Services in relation to construction of single residential unit, post harvest storage infrastructure, etc.</p>	
<p>Copyrights</p>	<p>Temporary use of Copyrights relating to original literary, dramatic, musical or artistic works or cinematography films.</p>	
<p>Performing Artist</p>	<p>The exemption is restricted to folk or classical art forms of music, dance & theatre. Hence, an artist acting in a TV serial will be treated as providing a service.</p>	
<p>Hotels & restaurants</p>	<p>i. Exemption is restricted to hotels, inns, guest houses, etc. having tariff rate of Rs.1000 or less per day;</p> <p>ii. Exemption is restricted to restaurants that are non-AC & do not serve any alcohol.</p>	
<p>Transportation by Rail or Sea specified goods</p>	<p>Goods specified in this regard include relief material during natural calamities, defence goods,</p>	

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
	postal mails, household goods, newspapers, agricultural goods, non-alcoholic foodstuff, fertilizers, etc.	
Goods transport agency (GTA) of specified goods	Goods specified in this regard include eggs, milk, foodgrains and perishable food items	In case of other goods exemption is restricted to consignment size of Rs.1500 per consignee or transport cost of Rs.750 per consignee.
Hiring of Goods carriage	<p>i. Exemption is restricted to hiring services to State Transport Undertaking for carrying more than 12 passengers.</p> <p>ii. Exemption applicable only when hired to GTA</p>	
Motor Vehicle Parking		Service excludes leasing of space to an entity for providing such parking facility
Specified services provided to Government & Provincial Authorities	Services by way of effluents treatment, waste management, drinking water management, ship repairs etc are covered here.	An Environmental consultant providing services to a Company providing Construction services would not be exempted
General Insurance Schemes	Services under the said insurance schemes will be restricted to specifically approved schemes like Scheme for Insurance of Tribals or Jan Arogya Bima Policy	
Societies to its members	<p>i. Services by Trade Union to its members is covered here;</p> <p>ii. Procurement of other exempt services for members;</p> <p>iii. Services by Housing</p>	For example: A society charges Rs.10000 pm per member. Out of this 6000 is towards watch & guard and club

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
	Co-operative or a residential complex having a contribution of less than Rs.5000 for procurement common goods and services.	facilities. Society will be liable to service tax on Rs.6000 subject to other conditions for attracting the levy.
Sub-contractors to Principal contractors	Service covers services by: i. Sub-broker to Stock broker; ii. Authorised person to a member of a commodity exchange; iii. Mutual fund agent or distributor to mutual fund or AMC; iv. Selling or marketing agent of lottery tickets to a distributor or a selling agent; v. Selling agent of SIM cards or recharge cards; vi. Business facilitator or correspondent in a rural areas to any Banking or Insurance Company.	
Job Work	Service covers Job work service in relation to the following: i. Agriculture, printing or textile processing; ii. Cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals; iii. Any goods on which appropriate duty is payable by the principal manufacturer iv. Processes like electroplating, powder coating, painting and the like for manufacturing a bicycle are exempt subject to value of clearances of Rs.1.50 crores	
Business exhibitions outside	The organizer in India of	Trade fair by

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
India	such an exhibition will be exempted.	Association of Leather Goods for its members in Dubai will be exempted
Telephone services	Exemption restricted to PCO & free phones at airports and hospitals.	
Slaughtering of Bovine Animals		
Services received from a person in a non-taxable territory	This exemption is restricted to receipt of services by Government, local authority, individual, Trust or NGO in relation to purposes other than business or commerce	For example: an Individual located in Mumbai hires an Italian Interior Designer to design his home – Service will be exempted

One must bear in mind here that there are several service specific exemptions that are still effective. Most of these exemptions will cease leaving the total number of exemption notifications down to merely 10 as against 88 at the moment. Hence, the above list of exempted services may be further expanded by the remaining notifications.

8.3.2 Excluded Services or Services in the Negative List

Section 66D provides the list of services that are not liable to service tax. The list of such services is as under:

Basic Particulars (A)	Service covers (B)	Service does not cover (C)
When Services Are Provided By a Certain Category of Persons		
Services by Government or Provincial Authority	All services except for the services stated in column C	<ul style="list-style-type: none"> i. Services like speed post, express parcel post, life insurance and agency services provided by Postal Department including support services in connection to a person other than Government; ii. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; iii. Transport of goods or passengers; or iv. Support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
Services by RBI	All Services	
Services by a foreign diplomatic mission located in India	All Services	
When Services Are Provided By a Certain Sector		
Agriculture	Services by way of: <ul style="list-style-type: none"> i. Agricultural operations like harvesting, threshing, seed testing, etc.; ii. Supply of farm labour; iii. Processes performed at the agri farm like cutting, drying, etc.; iv. Renting of Agro machinery; v. Handling of Agri produce like loading, 	Services in relation to agriculture that involve alteration of the essential characteristics of the agri produce.

Basic Particulars (A)	Service covers (B)	Service does not cover (C)
	etc. vi. Services of a broker of agri produce vii. Ancillary agri services	
Trading Class	Trading of Goods	
Manufacturing Class	Process amounting to manufacture or production of goods	
Advertising	Selling of space or time slots for advertisements	Advertisements broadcast by radio or television.
Infrastructure	Use of and access to a road or a bridge on payment of toll charges	
Games of Chance and Wagers	Betting, gambling or lottery	
Entertainment & Recreation	Admission to entertainment events or access to amusement facilities	
Electricity	Transmission or distribution of electricity by an electricity transmission or distribution utility	
Education	i. Pre-school and upto higher secondary level education; ii. Education as a part of a curriculum for obtaining a qualification recognised by any law; iii. Education as a part of an approved vocational education course.	
Finance	i. Extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; ii. Sale or purchase of foreign currency on Principal to Principal basis.	

Basic Particulars (A)	Service covers (B)	Service does not cover (C)
Transport	When passengers are transported by- i. A Stage Carrier; ii. Railways; iii. Metro, monorail, tramway; iv. Inland waterways; v. Public Transport in a vessel of less than 15 tonne net; vi. Metered cabs, radio taxis or auto rickshaws;	When passengers are transported by- i. Railways in first class or Air conditioned coach; ii. Public transport system meant predominantly for tourism.
Transport	Transport of goods i. By road; ii. By aircraft, inland waterway or vessel from a place outside India to the first port or airport it touches in India	Transport of goods i. By GTA; ii. By courier agency
When services are treated as Welfare Activities as regards the recipient		
Renting of Residential premises	Services by way of renting of residential dwelling for use as residence	
Services on death of an individual	Funeral, burial, crematorium or mortuary services including transportation of the deceased.	

8.3.3 Declared Services

There are certain activities that have been specifically covered as services. These services are called Declared Services and are provided for by the provisions of Section 66E. Following 9 services will be treated as Declared Services:

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
Renting	This will cover renting of immovable property.	Renting of residential premises, vacant agri land, renting by RBI & Government is not a declared service as covered by negative list.
Construction Activity	This will cover construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority.	Specific construction activities covered by the negative list & exempted services list are not declared services.
Intellectual Property Rights (IPRs)	This will cover Temporary transfer or permitting the use or enjoyment of any intellectual property right.	Specifically exempted copyrights are not declared services.
Information Technology	This will cover development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software	
Act of Forbearance	This will cover agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.	An example in this regard would be non-compete fees paid by commercial organizations.
Leasing	This will cover transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods.	If there is a transfer of Right to Use Goods the activity will amount to sale of goods and hence, the activity therefore will not be a service at all.
Hire Purchase	This will cover activities in relation to delivery of goods on hire purchase or	

Basic Nature of Services/Sectors	Broad Descriptions	Remarks
	any system of payment by installments.	
Works Contract	This will cover Service portion in execution of a works contract.	Definition of what is a works contract has been restricted to construction services
Supply of food & drinks	This will cover service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.	

9. Place of Supply of services

9.1 What is meant by ‘taxable territory’?

Taxable territory means the whole of India except for the State of Jammu & Kashmir.

9.2 What is ‘Place of Supply of services’?

It is the place where the services are performed or deemed to be performed or agreed to be performed.

9.3 Why is it important to determine ‘Place of Supply of Services’?

Owing to the intangible nature of services it is quite a challenge to definitively say as to when the service provision started, when it ended, when & where was the service consumed & where was the service provided. These aspects need to be clarified to fix up the taxing jurisdiction of the service in question.

9.4 How will Import and Export of services be administered under the new levy?

A transaction will qualify as export when:

1. Service provided is a service other than in the negative list;
2. The Place of Provision of the service is outside India; and
3. The payment is received in convertible foreign exchange

A transaction will qualify as import when:

1. Service provided is a service other than in the negative list;

2. The Place of Provision of the service is in the Taxable territory.

Hence, it can be seen from the above that unless there are specific Rules to determine Place of Supply one will not be able to tell which of the services are locally provided and which of them are provide to or from outside the taxable territory.

9.5 What Rules will govern the determination of place of supply of services?

In this digital world the line of difference between and goods and services is blurring by the day. It has been clarified on several occasions that service tax is a destination based consumption tax.

Keeping the above in mind, Section 66C of the Act empowers the Central Government to make rules to determine the place where the Services are provided or deemed to have been provided. These Rules will be called the Place of Provision of Services Rules, 2012 ('Supply Rules').

At the present moment these rules will play a very important role in determining whether a particular service is imported or exported & hence, whether or not the same should be taxed.

These Rules will play a larger role beyond what is stated in the above paragraph once Goods & Services Tax is enacted and the States are given the right to tax services.

The present import and export rules will now be rescinded and subsumed by the Place of Supply Rules & the existing Service Tax Rules.

9.6.1 How does one determine the place of Supply of Services?

In determining the place of supply one must follow a 2 layered approach as follows:

Step 1: Determine the location of the service provider & service recipient

Step 2: Determine which of the Rules 3 to 12 of the Supply Rules will cover the service provided

The gist of the Draft Rules is tabulated hereunder:

Place of Supply is	Exceptions or Specific Inclusions	Remark & Example
(A)	(B)	(C)
Rule 3 : General Rule		

Place of Supply is	Exceptions or Specific Inclusions	Remark & Example
(A)	(B)	(C)
Location of Service recipient	Location of service provider will apply in cases where location of service recipient is not known in the ordinary course of business	<ol style="list-style-type: none"> 1. Courier service from London to Mumbai to deliver trade samples – place of supply will be Mumbai; 2. Astrological services to a foreigner in Rajashtan – place of supply will be Rajasthan
Rule 4 : Services based on Physical presence of goods		
Place of physical delivery of goods	Services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service	Offsite support services provided by a supplier in Korea of a Computer Server Machine located in Ahmedabad – Place of Supply is Ahmedabad
Place of performance of service in conjunction with the physical delivery of goods		Goods imported from Germany & under a separate contract the importer installs the goods in service receiver's premises in Gurgaon – Place of supply is Gurgaon
Rule 4 :Services based on Physical presence of individual or his agent		
Place of actual performance of service		<ol style="list-style-type: none"> 1. Services provided by a Hair dresser to a client located Dubai – Place of supply is not in Taxable Territory 2. Service provided by a Restaurant in Mumbai to its clients – Place of Supply is Mumbai
Rule 5 : Services in connection with Immovable Property		
Location of the Immovable property	Services covered here would be that of estate agents, provision of hotel accommodation by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction	Dubai based Subsidiary of an Indian Company employs an architect in India to design a Hotel in Dubai – Place of supply of service is in a non-taxable territory.

Place of Supply is	Exceptions or Specific Inclusions	Remark & Example
(A)	(B)	(C)
	work, including architects or interior decorators.	
Rule 6 :Services in connection with Events		
Place of where event was held	Events specifically referred to pertain to culture, sports, entertainment, etc. or events being in the nature of exhibitions, fairs, conventions, etc.	A singer located in India performs in a concert held in Malaysia – The place of supply is in a non-taxable territory.
Rule 8 :Services where provider and receiver are located in taxable territory		
Location of Service Receiver		Hair stylist located in Mumbai providing services to a singer located in Jaipur when on a concert tour in Malaysia – Place of supply is in Jaipur
Rule 10 :Services based on Physical performance of Service		
Location of Service Provider	<ol style="list-style-type: none"> 1. Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders; 2. Telecommunication services provided to subscribers; 3. Online information and database access or retrieval services; 4. Intermediary services; 5. Service consisting of hiring of means of transport, upto a period of one month. 	<ol style="list-style-type: none"> 1. NRI having NRE/NRO accounts with an UBI, Mumbai– Place of supply is Mumbai; 2. NBFC providing advisory services for raising funds in India to a Company located in Singapore- Place of Supply is in non-taxable territory; 3. Indian airline leasing out one of its cargo aircrafts to Sri Lankan airlines for 60 days – Place of supply is in a non-taxable territory
Rule 11 :Services in relation to transportation of Goods		
Destination of goods	<ol style="list-style-type: none"> 1. Mail & Courier services are not covered here. 2. In the case of GTA the place of supply will be the location of Consignor/Consignee. 	Aircraft carrying cargo destined for Italy – Place of Supply is in Non-taxable territory
Rule 12 :Services provided to passengers on board a conveyance		
First scheduled point of departure of that conveyance	Services covered here are ones that are provided on board a conveyance during	In Flight catering services on a flight from Mumbai to New

Place of Supply is	Exceptions or Specific Inclusions	Remark & Example
(A)	(B)	(C)
	the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board.	York with stopover at Doha – Place of supply is Mumbai

9.6.2 What happens if services are covered by more than one Rule?

It is stated in Rule 14 of the Supply Rules that in such circumstances the Rule that comes later is to be considered. Lets take an example as under:

Nature of service	First applicable Rule	Second Applicable Rule
Hair stylist located in Mumbai providing services to a singer located in Jaipur when on a concert tour in Malaysia	Based on Rule 4 – the place of Supply is Malaysia as the service is performed in Malaysia	Based in Rule 8 – the place of supply is Jaipur (India) as the singer is located in India

In the above case Rule 8 will be applicable & place of supply will be the taxable territory that is Jaipur in this case.

10. Valuation of Services

In general, service tax will be payable on the consideration or deemed consideration charged for services rendered.

The rules, norms & provisions relating to valuation of services under the new levy will remain almost the same except for the questions raised herein below.

10.1 What will be the Value on which Service Tax is payable where the service rendered is in the nature of a works contract?⁴

The Constitution of India does not permit the levy of tax by the Central Government on transfer of property in goods. Hence, there is need to charge Service Tax only on the service portion of the works contract. In light of that, the Determination of Value Rules (“Valuation Rules”) 3 prescribed methods of determining the value of Works Contract service liable to service tax and they are as under:

1. By value of goods involved in Works Contract

⁴ Notification No.12/2012-ST dtd.17.3.12 effective from the date on which Section 66B comes into effect

This method of computing taxable value will remain unchanged across the present & proposed regime. The valuation exercise basically requires bifurcation of value of goods involved and thereafter, service tax would be levied only the service portion.

2. By composition method

This method of computing taxable value will remain unchanged across the present & proposed regime. This method assumes that the contract cannot be divided into goods and services and therefore, the entire contract price is taken as the value of taxable services & a concessional rate of service tax is levied thereon. At present the rate of Service Tax prescribed is 4.8% (plus cess @ 3%).

3. By contract method (i.e.abatement on total contract price)

Under this method the value of the service portion is arrived at by applying a prescribed abatement rate. Details on the manner in which taxable value will be arrived at under this method are given hereunder:

Where works contract is for execution of-	Value = %age of the total amount charged	Under present regime
(i) Original works	40%	33%
(ii) Original works and the gross amount charged includes the value of land	25%	25%
(iii) Works contracts, other than i & ii, including contracts for completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings.	60%	Nil

Points to note as regards valuation under this method

- a. *“Original Works”* means all new constructions & additions & alterations to abandoned or damaged structures on land that are required to make them workable.
- b. *“Total amount Charged”* means the sum total of gross amount and the value of all goods, excluding the value added tax, if any, levied on goods and services supplied free of cost for use in or in relation to the execution of works contract, under the same contract or any other contract.
- c. The value of Goods & Services supplied free cost will have to be ascertained based on the Fair Market Value of such goods and services.
- d. *“Works contract”* is defined inclusively to cover all services alongwith goods meant for a building or structure on land. As an improvement over the present definition completion services in relation to

renovated or altered buildings will also be treated as works contract as against only new buildings at present. All the activities in relation to the building or structure on land will be covered as works contracts as against the specified list provided by the present regime. For example: a residential complex is extensively renovated by a civil construction company. The service provided by the construction company will be treated as a works contract and the valuation of taxable services will be as aforementioned stated. Under the present regime this service is not covered by works contract service.

- e. Utilisation of Cenvat Credit has been explained as under:

Nature of Cenvat	Present Regime	Proposed Regime
Cenvat on Input Goods	Not Permitted	Not Permitted
Cenvat on Input Services	Not Permitted	Permitted
Cenvat on Capital Goods	Not Permitted	Permitted

10.2 What will be the Value on which Service Tax is payable where the service rendered involves supply of food and drinks in a restaurant or as outdoor catering for human consumption?⁵

The taxable value of services will be determined as under:

When Supplied by	Taxable Value = %age of total amount	Under Present Regime
A restaurant	40 %	30%
An outdoor catering service	60 %	50%

Points to note as regards valuation under this method

- “Total amount Charged” means the sum total of gross amount and the value of all goods, excluding the value added tax, if any, levied on goods and services supplied free of cost for use in or in relation to the supply of food or any other article of human consumption or any drink, under the same contract or any other contract.
- The value of Goods & Services supplied free cost will have to be ascertained based on the Fair Market Value of such goods and services.
- Utilisation of Cenvat Credit has been explained as under:

Nature of Cenvat	Present Regime	Proposed Regime
Cenvat on Input Goods	Not Permitted	Not Permitted for Cenvat on goods covered by Chapter 1 to 22 of Excise Tariff
Cenvat on Input Services	Not Permitted	Permitted

⁵ Notification No.12/2012-ST dtd.17.3.12 effective from the date on which Section 66B comes into effect

Cenvat on Capital Goods	Not Permitted	Permitted
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10.3 Whether demurrage charges & other similar charges liable to service tax?

Service tax will be payable on amounts realized as demurrage or over time charges by whatever name called received for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service. For example: An employee of a contractor is contracted to work on site as a labourer from 9am to 5pm. He thereafter provides watch and guard facilities from 10pm to 6am in the morning for which he is remunerated separately. Assuming the watch and guard facility is beyond the scope of his contract, the charges paid will have to be included while valuing the services. Further, if the said services are supplied free of cost a fair market value of the said services will have to be determined.

10.4 Whether interest payments form part of value of taxable services?

Interest on loans is not received on provision of any services and hence, will automatically be excluded from the value of taxable services.

On the other hand, the following interest shall not be considered as part of value of taxable services:

1. Interest on deposits; and
2. Interest on delayed payment of any consideration for the provision of services or sale of goods;

10.5 Whether cost of accidental damages form part of value of taxable services?

Accidental damages due to unforeseen actions that are not relatable to the provision of service are to be excluded from the value of taxable services. For example: Theft of petty cash at a construction site. This may be treated as accidental damages.

10.6 Whether abatements will be allowed under the new levy? If yes, to what extent?⁶

Apart from the abatements discussed in the above paragraphs given hereunder is the list of new abatements or amended abatement rates under the proposed levy-

⁶Notification No.12/2012-ST dtd.17.3.12 effective from the date on which Section 66B comes into effect

Part III – Service Tax – Proposed Levy

Nature of taxable service	Taxable Value = %age of Total Amount Present Rate		Utilisation of Cenvat Credit permitted on		
	Proposed	Present	Input Goods	Capital Goods	Input Services
Financial leasing services including equipment leasing and hire purchase	10 on EMI-Principal repaid	10 on EMI-Principal repaid	Yes	Yes	Yes
Transport of goods by rail	30	30	Yes	Yes	Yes
Transport of passengers by rail	30	New Levy			
Supply of food, drink or any other article of human consumption in relation to convention centre, club & association and mandap keeper with catering service	70	60 for Convention Centre & 70 for Mandap Keeper with Catering	Yes, generally except for Cenvat on goods covered by Chapter 1 to 22 of Excise Tariff	Yes	Yes
Transport of passengers by air	40	40	No	No	Yes
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	60	50	No	No	Yes
Transport of goods by road by Goods Transport Agency	25	25	No	No	No
Services provided in relation to chit	70	New Levy	No	No	No
Renting of any motor vehicle designed to carry passengers	40	40	No	No	No
Transport of goods in a vessel from one port in India to another	50	75	No	No	No
Tour operator providing services in relation to a <u>package tour</u> where the bill issued for this purpose indicates that it is inclusive of charges for such a tour	25	25	No	No	No

Nature of taxable service	Taxable Value = %age of Total Amount Present Rate		Utilisation of Cenvat Credit permitted on		
	Proposed	Present	Input Goods	Capital Goods	Input Services
Tour operator providing services <u>solely for the purpose of arranging or booking accommodation</u> and the invoice does not include only service charges of the tour operator for providing such services	10	10	No	No	No
Tour operator providing services, <u>other than services specified above</u> , in relation to a tour where the bill issued for this purpose indicates that it is inclusive of charges for such a tour	40	40	No	No	No

10.7 Do I have an option to avoid taking abatements & pay service tax on taxable value as per actuals?⁷

Yes. One will have to refer to the Valuation Rules & make the necessary inclusions and the necessary exclusions when arriving at the taxable value for the purposes of service tax. For example: a tour operator maintains a separate account of expenses like airfare, hotel booking costs, etc. For such expenses he raises debit note and raises a separate invoice as a %age of total cost charged in debit note. In such cases it is only the amount charged in the invoice that is liable to service tax. At his option he could pay service tax on 10% of the total amount (debit note+invoice) as stated in the above table.

10.8 How does one value services bundled with supply of goods that are not covered by abatements or other prescribed value adjustments?

Under the present levy value of goods sold in the course of providing the service are allowed as deduction from the total amount charged to arrive at taxable value of services.

⁷ Notification No.12/2003 allows value based adjustment in relation to value of goods sold in providing a taxable service. This notification is likely to be superseded.

This value adjustment mechanism will cease under the new levy. In giving effect to the case of *Bharat Sanchar Nigam Ltd. v/s. Union of India* it can be inferred that under the new levy:

1. Where goods & services are sold under distinct contracts

Taxable value of service will be value charged under the service contract. For example: if a private tourist service provider takes tourists for a Mumbai Darshan trip. In the course of the trip he sells food and drinks for a consideration to the tourists. In this case taxable value for the purpose of service tax will be only the fee charged for the Mumbai Darshan trip and not the value of food articles sold on board.

2. Where the dominant nature of the contract is to sell goods

Taxable value of services in such case will be NIL. Such activities or transactions will not attract service tax at all. For example: Food & drinks are served to customers who have come to purchase garments at a shop. The primary activity is the trade of goods at the shop and not service of food and drinks and hence, taxable value for the purpose of service tax is NIL.

3. Where dominant nature of the contract is to provide services

Taxable value of services will be total amount charged. For example: In the case of beauty parlour or saloon several goods like shaving cream, blade, face packs, etc. are used to provide services like a facial, shaving, face lift, etc. The primary objective of performing these activities was to provide the services as mentioned and not to sell goods as referred to above. Hence, the taxable value of services is equal to the total amount charged to the consumer including the cost of materials. This aspect is certain to bring some grief when fixing the levy under the sales tax laws.

The test applied above has been coined by the court as ‘dominant nature test’.

11. Liability to pay service tax

11.1 Who will be liable to pay Service Tax?

Under Service Tax Rules, 1994 ‘a person liable to pay service tax generally means the service provider’. Nevertheless, in the case of some of the services it is the service recipient who is liable to discharge the service tax liability. This method of discharging the service tax liability is popularly called the ‘reverse charge mechanism’.

11.2 What is reverse charge mechanism & how will it operate under the new levy?

As against the general Rule, the reverse charge mechanism requires the service receiver to pay service tax. In other words, the 'person liable to pay service tax' is the service recipient & not the service provider.

Reverse charge mechanism is expected to be refurbished to a large extent under the proposed levy where the liability to pay service tax is being shared in some cases. In accordance with notification 15/2012 dtd.16th March 2012 the reverse charge mechanism is proposed to operate as tabulated below-

Description of a service	Percentage of total service tax payable by-		Whether present levy has any such provision
	Service Provider	Service Receiver	
Following Services provided by a individual, HUF, proprietary firm, partnership firm, AOP located in the taxable territory to any company incorporated under the Companies Act, 1956 or a business entity registered as body corporate located in the taxable territory:			
Services by way of renting or hiring any motor vehicle designed to carry passenger when:			No
i. Abated;	Nil	100 %	
ii. Non-Abated	60%	40%	
Services by way of supply of manpower for any purpose	25%	75 %	No
Services by way of Works Contract	50%	50%	No
Other Services:			
Insurance agent to any person carrying on insurance business	Nil	100%	Yes
Goods transport agency in respect of transportation of goods by road to any person other than individual or HUF who are not registered under Central Excise	Nil	100%	Yes
Sponsorship Service	Nil	100%	Yes
Services by arbitral tribunal	Nil	100%	No
Services by individual advocate	Nil	100%	No
Any Taxable services provided by a person located in non-taxable territory to any person located in taxable territory	Nil	100%	Yes
Support services by Government or local authority	Nil	100%	No

12. What will remain nearly unchanged under the proposed levy when compared to the present levy?

Broadly speaking the following provisions, regularly & commonly affecting assesses, will remain nearly unchanged:

1. The maximum threshold limit exemption of Rs.10 lakhs (where it is well understood that all services provided within the taxable territory will have to be considered to compute this limit);
2. Point of Taxation (except where they pertain to specific services);
3. Payment of service tax within prescribed time and manner;
4. Filing of service tax returns in the prescribed time and manner (except that a common return for Service Tax & Central Excise will be prescribed & service tax payers not being individual, HUF or firms who have paid service tax of Rs.25 lakhs or more in the previous year will be required to file a monthly return & all others quarterly returns as against the 6 monthly returns for all assesses under the present levy);
5. Manner of obtaining registration (except that a common application form for service tax & excise registration will be prescribed);
6. Cenvat Credit availment & consumption (except where they pertain to specific services).

13. Illustrations clarifying important concepts

Illustrations given hereunder are attempting to clarify some of the relevant concepts of the proposed levy and also the line of thinking that one would employ in arriving at conclusions under the proposed levy. There can be other multifarious activities and scenarios that will need fair consideration on a case to case basis.

Example 1: A Merchant's Association located in Mumbai organizes a trade fair for its members in Dubai. For the said trade fair it charges its members a lumpsum fee for providing a stall to display their wares & for travelling, lodging & boarding.

Whether the activity is a Service?	Yes. The entire gamut of services will be towards Business Exhibition. There will be no need to vivisect the service into its parts as each of the parts are not mutually exclusive that is not capable of being performed independent of the other.
Whether the service is a declared service?	No.
Whether the service is covered by negative list?	No.
Whether the service is an exempted service?	Yes.
Where is the place supply of the service?	Mumbai.

Conclusion	Since the service by itself is exempted there is no requirement to evaluate the value of taxable services, liability for payment, etc. This service will not attract service tax. At the moment, a similar exemption is provided by way of notification no.5/2011 dtd.1.3.11.
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Example 2: An international association located in Germany organizes a trade fair in Germany. Some Indian companies participate in the trade fair for a charge for providing a stall to display their wares.

Whether the activity is a Service?	Yes.
Whether the service is a declared service?	No.
Whether the service is covered by negative list?	No.
Whether the service is a exempted service?	No.
Where is the place supply of the service?	Germany.
Conclusion	Since the service is rendered in a non-taxable territory there is no incidence of service tax.

Example 3: An Indian Company located in Mumbai allows its branch in Malaysia to access its Information database lying on computer servers located in the USA for a fee at times and without a fee on some other occasions.

Whether the activity is a Service?	Yes.
Whether the service is a declared service?	No.
Whether the service is covered by negative list?	No.
Whether the service is an exempted service?	No.
Where is the place supply of the service?	Mumbai.
What is the value of taxable service?	The fee actually charged in case where a fee is charged and the fair market value of the service in case where the fee is not so charged. If it is maintained that no fee is charged generally to any non-associated enterprise for permitting the database retrieval, the cost of provision of such service will be the taxable value.
Who is liable to pay service tax?	The Indian Company as a service provider.
Conclusion	The Central Excise Officer in such

	cases will be free to evaluate the fairness of the fee charged and make necessary scrutinizes in relation thereto.
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Example 4: Works contract services by a partnership firm located in Mumbai for construction of residential quarters to an Indian Company located in Gurgaon for its employees in Gurgaon

Whether the activity is a Service?	Yes.
Whether the service is a declared service?	Yes.
Whether the service is covered by negative list?	No.
Whether the service is a exempted service?	No.
Where is the place supply of the service?	Gurgaon
What is the value of taxable service?	The service portion of the Works Contract computed under any of the 3 methods prescribed by the Valuation Rules.
Who is liable to pay service tax?	50% of the tax will be paid by the Indian Company & 50% of the tax will be paid by the firm.
Conclusion	The invoicing will be done as prescribed under the Rules. It is only the payment of service tax that is an innovation over the present levy. Presently, a residential complex of more than 12 dwelling units is only covered but this will not be the case under the propose levy.

Example 5: As a small change over the above example where the Indian Company contracts with the partnership firm in Mumbai to build a bungalow for one of its directors in Gurgaon

Whether the activity is a Service?	No.
Whether the service is covered by negative list?	Yes, since the construction of a single residential unit is not covered
Conclusion	Since the activity by itself is not a service for the purpose of services tax there is no requirement to evaluate the place of supply, value of taxable services, liability for payment, etc.

Example 6: Works contract services provided for construction of residential quarters for officers of the Indian Income Tax authority in Mumbai

Whether the activity is a Service?	Yes.
Whether the service is a declared service?	Yes.
Whether the service is covered by negative list?	No.
Whether the service is an exempted service?	Yes.
Where is the place supply of the service?	Mumbai
Conclusion	Since the service by itself is exempted there is no requirement to evaluate the value of taxable services, liability for payment, etc. This service will not attract service tax.

Example 7: Earthmoving machinery provided by an Indian Company in Himachal Pradesh to a commercial construction company in J & K for construction of a business house in Srinagar

Whether the activity is a Service?	Yes. As there is no effective transfer of control & possession the property in goods are not transferred under a sale and hence, the activity is a service.
Whether the service is a declared service?	No.
Whether the service is covered by negative list?	No.
Whether the service is an exempted service?	No.
Where is the place supply of the service?	Srinagar.
Conclusion	Since the service is provided or supplied in a non-taxable territory the service will not attract service tax.

Example 8: Activity of renting of crockery by a partnership firm in Mumbai to a Hotel in Bengaluru

Whether the activity is a Service?	No. As there is effective transfer of control & possession of the property in goods under sale and hence, the activity is not a service.
Whether the service is covered by negative list?	No, since the negative list deals only with trading in goods.
Conclusion	Since the activity by itself is not a service for the purpose of services tax there is no requirement to evaluate the place of supply, value of taxable services, liability for payment, etc.

Example 9: Activity of distribution of lottery by an agent located in Mumbai

Whether the activity is a Service?	Yes. Even though the main service is of gambling, betting & lottery is covered by the negative list the incidental services are not. ⁸ The agency activity will be an incidental service.
Whether the service is covered by negative list?	No, it is only the main service that is covered
Where is the place supply of the service?	Mumbai
What is the value of taxable service & amount of service tax payable?	This will be governed by Rule 6(7C) of the Service Tax Rules.
Who is liable to pay service tax?	The agent.
Conclusion	The agent will have the option of paying service tax at the applicable rate on the amount of commission actually received.

14. Conclusion

Changes to the Service Tax Legislation are coloured by the manner in which Goods and Services Tax is likely to be legislated.

In many ways than one, we can get a sense of the resolve of the Central Government to move to the GST Regime. Some of the factors that indicate this resolve are as under:

1. Harmonisation of law relating to Central Excise & Service Tax with a view to have a common code of taxation at the Centre for tax on manufacture and services.
2. Legislation of place of supply of services Rules will go a long way in fixing the Indian State that will be the recipient of the tax revenue as and when GST is made effective.
3. Moving all the Indian States on to the GST network as regards filing of Returns, payment of taxes, etc. is also a key driver towards GST.
4. Broadening the Cenvat Credit base specifically in the case of Exports where end to end credit mechanisms will be put in place, is an important step in moving towards a full fledged GST.
5. Curtailing double taxation or cascading effects of tax by way of clear definitions of what are goods & services. Like for example: in the case of Information technology – This activity has been identified clearly to mean that off the shelf sale of packaged software is not service but goods and hence, out of the service tax net. Activities like trading, manufacturing, supply of electricity, lotteries and

⁸ Section 66F has clarified that reference to the main service shall not include reference to a service which is used for providing main service

entertainment & recreation are also kept out of the service tax net considering that there are already local levies in the form of sales tax, excise, electricity duties, tax on lotteries & entertainment tax respectively on such activities.

Several other amendments and clarifications will follow in time to come so as to ensure the appropriate execution and interpretation of the proposed levy.

It is time that all businesses took a very close look at their operations and business models to identify what are goods and what is service. This will be a useful exercise with the advent of GST.

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**PART III - CENTRAL EXCISE
EXECUTIVE SUMMARY**

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1. Changes in Excise Duty rates

1.1 Changes in Excise Duty Rates for Non-Petroleum goods other than those covered in 1.2

Old Rate	New rates effective from 17.3.12
Goods liable to 1% Excise Duty	2%
Goods liable to 5% Excise Duty	6%
Goods liable to 10% Excise Duty	12%

1.2 For petroleum goods, the statutory ad valorem duty or the ad valorem component on products having composite rate is also being reduced to 14%.

All the changes in rate of ED will be effective from 17th March 2012

2. Chapter-wise view of Excise Duty Rate Structure

There is no change except for the change in the basic rate structure as referred to in 1(A) & (B) above in the case of goods covered by Chapters 1 to 19, Chapters 22 to 23, Chapter 29, Chapters 31 to 35, Chapters 37 to 39, Chapters 41 to 47, Chapter 49, Chapters 50 to 60, Chapters 65 to 70, Chapters 80 to 84, Chapters 86, Chapters 91 to 93, Chapters 95.

Again it will be pertinent to note that the unchanged chapters might relate to goods that have special notified rates. These rates have remained unchanged subject to the details of amendments in ED Rates given in the tables here in below.

2.1 ED rate Enhancement

All changes stated herein will be effective from 17th March 2012

In the following cases either there is enhancement of ED or imposition of ED:

Chapter Reference	Particulars	Notification passed on 17th March 2012
Chapter 21- Tariff item 21069020 and 24039990	Pan Masala and Guthka notified under section 3A.	13/2012-CE
Chapter 24	Cigarettes, cigars, cheroots, cigarillos & biris by imposing an additional Ad Valorem Duty or Value based levy.	Clause 141 read with the Seventh schedule
Chapter 24 - Tariff Item	Chewing tobacco,	14/2012-CE

Chapter Reference	Particulars	Notification passed on 17th March 2012
24039910, 2401 & 24039930	unmanufactured tobacco and Jarda scented tobacco notified under section 3A.	
Chapter 27	Cess rate enhanced to Rs.4500 per tonne on Indigenous crude under the Oil Industry (Development) Act, 1974.	<i>Clause 151 of Finance Bill, 2012</i>
Chapter 61	ED enhanced to 12% on Readymade garments bearing a brand name or sold under a brand name.	<i>18/2012-CE</i>
Chapter 64	For footwear exceeding Rs. 500, the applicable duty would be 12%.	<i>12/2012-CE</i>
Chapter 71	ED from 1.5% to 3% on Serially numbered gold bars, other than tola bars, starting from the gold ore or concentrate/gold dore bar stage in the same factory.	<i>12/2012-CE</i>
Chapter 71	ED from 2% to 3% on Serially numbered gold bars , other than tola bars and gold coin of purity not below 99.5% manufactured during the process of copper smelting.	<i>12/2012-CE</i>
Chapter 71	Ad-valorem from 5% to 10% on DTA [Domestic Tariff Area] clearances of plain gold jewellery manufactured by an EOU (Export Oriented Units).	<i>23/2003-CE dated 31.03.03 as amended by 5/2012-CE</i>
Chapter 71	An ED of 1% without CENVAT credit facility is being imposed on all articles of jewellery other than silver jewellery.	<i>12/2012-CE and 09/2012-CE(N.T.)</i>
Chapter 85	ED @ 2% without CENVAT Credit is being extended to parts, components and	<i>1/2011-CE dated the 1st March 2011 as amended by.16/2012-CE</i>

Chapter Reference	Particulars	Notification passed on 17th March 2012
	specified accessories viz. battery chargers, PC Connectivity Cables, Memory cards and hands-free headphones of mobile phones.	
Chapter 87	Refer table of note 1	12/2012-CE

NOTE-1

Conditions	Type of Vehicle					
	Petrol		Diesel		LPG/CNG	
	OLD	NEW	OLD	NEW	OLD	NEW
> 4000mm & < 1200cc	22%	24%	-	-	-	-
> 4000mm & > 1500cc	22% + 15000	27%	22% + 15000	27%	-	-
> 4000mm & < 1500cc	-	-	22%	24%	-	-
< =4000mm & < =1200cc	-	-	-	-	10%	12%
< = 4000mm & < =1500cc	-	-	10%	12%	-	-

Key- < means "less than", > means "greater than" & means < = is less than & equal to.

2.2 ED Exemptions

In the following cases an exemption from ED has been granted:

Chapter Reference	Particulars	Notification passed on 17th March 2012
Chapter 20	Food preparations containing fruits and vegetables which are prepared and served in a hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet.	12 /2012-CE
Chapter 30	Six specified lives saving drugs/vaccines and bulk drugs for their manufacture.	12/2012-CE 6 specified drugs are as follows:

Chapter Reference	Particulars	Notification passed on 17 th March 2012
		a. Raltegravir potassium used for treating HIV; b. Rotavirus vaccine, live, oral, pentavalent; c. Pneumococcal polysaccharide vaccine for thalassaemia; d. Posaconazole oral suspension for life threatening fungal infection; e. Temsirolimus concentrate for infusion for injection for renal cell carcinoma and natalizumab for multiple sclerosis
Chapter 64	The exemption limit available to non-leather footwear is being increased to MRP Rs. 500.	12/2012-CE
Chapter 71	Gold coins of purity 99.5% and above and silver coins of purity 99.9% and above.	12/2012-CE
Chapter 71	All articles of precious metals not bearing a brand name.	12/2012-CE
Chapter 71	Silver jewellery is fully exempted although an excise duty of 1% without CENVAT credit facility is imposed on all other articles of jewellery.	12/2012-CE and 09/2012-CE(N.T.)
Chapter 88- Heading 8802	Parts and testing equipment for manufacture, repair and overhauling of aircraft.	12/2012-CE

Chapter Reference	Particulars	Notification passed on 17 th March 2012
Chapters 90	The exemption to intraocular lens is being restored.	
Chapter 96	Refills and inks in bulk packs (not meant for retail sale) used for manufacture of pens of value not exceeding Rs. 200 per piece.	12/2012-CE

2.3 ED rate Reduction

All changes stated herein will be effective from 17th March 2012

In the following cases reduction of ED has been prescribed:

Chapter Reference	Particulars	Notification passed on 17 th March 2012
Chapter 21	From 10% to 6% ad valorem on Processed food products of soya.	12/2012-CE
Chapter 28	ED from 10% to 6% on iodine.	12/2012-CE
Chapter 36	ED from 10% to 6% on Matches manufactured by semi-mechanized units - carrying out one or both the processes of frame filling or dipping of splints in the composition for match heads through aid of power.	12 /2012-CE
Chapters 40	ED from 10% to nil on pneumatic tyres, new or retreaded, used in aircraft.	
Chapter 85	ED from 10% to 6% upto 31 st March, 2013 on lithium ion batteries packs for supply to electric vehicle/Hybrid vehicle manufacturers.	12/2012-CE
Chapter 87	ED from 10% to 6% till 31st March, 2013 on Replacement batteries for supply to electric vehicle manufacturers who are registered with IREDA or any State Nodal Agency notified for	12/2012-CE

Chapter Reference	Particulars	Notification passed on 17th March 2012
	the purpose by the Ministry of New & Renewable Energy for Central finance assistance (CFA).	
Chapter 87	ED from 10% to 6% on specified parts of hybrid vehicle.	12/2012-CE
Chapter 90	ED reduced to 6% on parts of Blood Pressure Monitors and Blood glucose monitoring systems (Gluco-meters) on actual user basis.	12/2012-CE
Chapter 90	ED reduced to 6% on specified raw materials viz. Polypropylene, Stainless Steel Strip and Stainless Steel capillary tube for manufacture of syringe, needle, catheters, and cannulae on actual user basis.	12 /2012-CE
Chapter 90	ED reduced to Nil on specified raw materials viz. stainless steel tube and wire, cobalt chromium tube, Hayness Alloy-25 and polypropylene mesh required for manufacture of Coronary stents/ coronary stent system and artificial heart valve on actual user basis.	12/2012-CE
Chapter 94	Reduced to 6% on LED Lamps. LEDs required for manufacturing of such lamps will also attract excise duty @ 6%.	12/2012-CE

3. New activities deemed as Manufacture

All changes stated herein will be effective from 17th March 2012

Following activities that are now deemed as Manufacture:

Chapter Reference	Particulars
Chapter 71 – Chapter	The processes of affixing or embossing trade name

Chapter Reference	Particulars
Note for Headings 7113 & 7114	or brand name on articles of jewellery or on articles of goldsmiths or silversmiths wares of precious metal or of metal clad with precious metal, shall amount to manufacture.
Chapter 72 to 73 - Chapter note for heading 7208	The process of oiling and pickling in respect of goods of heading 7208 shall amount to manufacture.
Chapter 76	The process of cutting, slitting and printing of aluminium foils shall amount to manufacture.
Chapter 85	The process of matching, batching and charging of Lithium Ion batteries or the making of battery packs shall amount to manufacture.

4. Changes in Abatement rates for Charging ED

All changes stated herein will be effective from 17th March 2012

Chapter Reference	Particulars	Notification passed on 17th March 2012
Chapter 61	The rate of abatement on such readymade garments is being increased from 55 % to 70%. Hence, the tariff value for purposes of charging duty would be @ 30% of the retail sale price.	17/2012-CE (NT)
Chapters 62 to 63	The rate of abatement on made -ups bearing a brand name or sold under a brand name is being increased from 55 % to 70%. Hence, the tariff value for purposes of charging duty would be @ 30% of the retail sale price.	17/2012-CE (NT)
Chapter 71	ED imposed on jewellery is to be paid on tariff value which is being fixed at 30% of the transaction value as declared in the invoice.	12/2012-CE and 09/2012-CE(N.T.)

5. Other Chapter Specific changes

Some of the other Chapter specific changes are as given hereunder:

5.1 Relaxation of norms relating to returns of Readymade garments (Chapter 61 – Notification No.8/2012 dtd.17th March 2012)

Position till 16th March 2012

In terms of notification no.31/2011-CE dated 24.3.2011, full exemption from Central Excise duty is available to duty-paid, branded ready-made garments and made-ups returned or brought back to the same factory or premises and cleared after being re-made, re-conditioned, re-packed or subjected to any other process, subject to the fulfillment of certain conditions.

Position w.e.f. 17th March 2012

The exemption will now be available to goods returned or brought back to any registered premises of the same brand owner/ manufacturer and not only to those returned to the same factory provided the goods are returned or brought back within a maximum period of one year from the date of their clearance.

Value of Clearances provisions rationalised

It has been clarified by way of an explanation that the threshold limit of 10% of the aggregate value of clearances for home consumption in the preceding year is to be computed for each factory/ registered premises separately. It has also been clarified that in computing this limit the value of goods cleared under the provisions of rule 16 of the Central Excise Rules are to be excluded.

Certificate by the manufacturer

Finally, duty-free clearance after the prescribed processes have been carried out on the returned goods is to be allowed on the basis of a declaration from the manufacturer that the goods are duty-paid. This aspect should be verified on the basis of documents/ records maintained by the manufacturer at the time of audit of the unit

5.2 Revamp in the scheme of excise duty on Jewellery manufacturers (Chapter 71 – Notification No.15/2012 dtd.17th March 2012 & Notification 9/2012 dtd.17th March 2012)

Basis

Levy of excise duty on jewellery of gold & silver is as under:

Jewellery made from	Whether Excise Duty On			
	Branded Jewellery		Unbranded Jewellery	
	from 17.03.12	Upto 16.03.12	from 17.03.12	Upto 16.03.12
Gold	Yes	Yes	Yes	No
Silver	No	Yes	No	No

Rate of Excise Duty

Excise duty rate of 1% without Cenvat Credit has been prescribed in the case of branded and unbranded gold jewellery.

SSI Exemption rationalized

1. Eligible manufacturers will be entitled for the the SSI exemption limit of Rs.1.50 crores during 2012-13 where the value of clearances by jewellery manufacturers during 2011-12 has not exceeded Rs.4.00 crores;
2. The turnover limit of Rs.4 crore during 2011-12 will be computed on the basis of tariff value;
3. Tariff value has been prescribed as 30% of the transaction value (i.e.invoice value);
4. Manner of computing Rs.4 crores for 2011-12 will be Value of clearances of 2011-12 = Total value of Clearances upto 16th March 2012 + 30% of the Invoice Value from 17th March 2012 to 31st March 2012. If the value of clearances have not so exceeded Rs.4 crores then SSI exemption can be claimed by the eligible jewellery manufacturer for Rs.1.50 crores in 2012-13.

Applicability of Tariff Value

The tariff value of 30% as referred to above will not apply where articles of jewellery are manufactured from precious metal or old jewellery provided by the retail customer. So for example: If Mr.X acquires old gold jewellery of Mrs.A & converts the same into a fresh piece or pieces of jewellery. Such manufacturers will not be able to avail the benefit of this tariff value.

6. Other Legislative Changes

6.1 Central Excise Act, 1944

All changes stated herein will be effective from the date on which the Finance Bill, 2012 receives the assent of the president.

6.1.1 Relaxation of Prosecution Norms

The provisions of the Central Excise Act relating to offences and penalties are being aligned with those under the Customs Act. In terms of section 9(1)(i) of the Act, offences involving excisable goods where the duty leviable **exceeds Rs.1 lakh** are punishable with imprisonment for a term which may extend to seven years and with fine. It is proposed to **enhance this duty amount to Rs.30 lakh.**

6.2 Central Excise Rules, 2002

All changes stated herein will be effective from 17th March 2012

6.2.1 No registration for job worker manufacturing Jewellery

Rule 12AA of the Central Excise Rules has been amended to provide that every person who gets articles of jewellery of heading no.7113 produced or manufactured on job-work shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with the procedural requirements, as if he is the manufacturer. In other words, those artisans or goldsmiths who only manufacture jewellery for others on job-work need not obtain registration. The option to the job-worker to register, if he so desires, has been deleted.

6.2.2 Clarification on Manufacturing units set up in J & K

Notification No.1/2010-CE dated 6th February, 2010 provides exemption from Central Excise duty to goods cleared from new units or units that have undertaken substantial expansion in the State of Jammu and Kashmir for a period of ten years from the date of commencement of commercial production. Doubts were raised about the interpretation of provisions of this exemption relating to the date from which the ten years period is to be computed in the case of units undertaking substantial expansion. The notification is being amended retrospectively from the date of issue of the said notification i.e. 6th February, 2010 to provide that for units undertaking substantial expansion, the exemption period of ten years would be computed from the date of commercial production from the expanded capacity.

6.3 Amendments in Cenvat Credit Rules, 2004

All changes stated herein will be effective from 1st April 2012

6.3.1 Cenvat credit adjustment on Clearance of Capital goods after their use

Rule 3(5) and 3(5A) are being amended to prescribe that in case the capital goods on which Cenvat credit has been taken are cleared after

being used then the amount payable shall be either the amount calculated on the basis of Cenvat credit taken at the time of receipt reduced by a prescribed percentage or the duty on transaction value whichever is higher.

6.3.2 Transferability of SAD

Rule 10A is being inserted to permit transfer of unutilized credit of SAD lying in balance at the end of each quarter to another factory of the manufacturer.

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**PART V - CUSTOMS
EXECUTIVE SUMMARY**

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Given herein are changes, amendments and new trends in Duties of Customs & allied levies.

1. Rate of Customs Duty

No change is proposed in the peak rate of customs duty of 10 per cent on non-agricultural goods. Barring a few specific items, the rates below the peak are also being retained.

2. Chapter wise view of the Customs Duty rates

There are no changes in the rate of Customs Duty on goods covered by Chapters 1 to 4, 6 to 18, 19, 20, 22 to 25, 29, 33, 34, 36 to 38, 41 to 43, 45, 46, 49, 50, 52, 53, 55, 57 to 70, 91 to 97 of the Customs Tariff.

There are some exceptions / amendments / enhancements / reductions made in relation to some of the goods covered by the remaining Chapters. It must be borne in mind the changes are only in relation to the said goods and the Duty structure on remaining goods falling in such Chapters will remain unchanged.

All the changes herein stated will be effective from 17th March 2012.

Please note abbreviations used:

BCD – Basic Import Duty

BCD (ED) – Basic Export Duty

CVD – Countervailing Duty

SAD – Special Additional Duty

2.1 Duty Reduction or Exemption

In the following cases either an exemption or reduction of Duties has been granted:

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
1	Artemia	5- 0511 99 11	BCD – Reduced from 30% to 5%	12/2012 (Sr. No.15)	
2	Soya Protein Concentrate	21- 2106 10 00	BCD – Reduced from 30% to 10%	12/2012 (Sr. No.91)	
3	Nickel Ores & Concentrates	26- 2604 00 00	Fully Exempted	12/2012 (Sr. No.118)	
4	Steam Coal	27- 2701 19020	BCD – Fully Exempted along with 1% CVD	12/2012 (Sr. No.123)	

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
5	Liquefied Natural Gas (LNG) and Natural Gas(NG)	27	BCD (ED) – Fully Exempted	12/2012 (Sr. No.139)	Provided when Imported for generation of Electrical Energy by a Power Generating Co.
6	Nickel Oxide & Hydroxide	28- 2825 40 00	BCD – Reduced from 7.5% to NIL	12/2012 (Sr. No.161)	
7	Ammonium Metavanadate	28	BCD – Reduced from 7.5% to 2.5%	12/2012 (Sr. No.162)	
8	Iodine	28- 2801 20 00	BCD – Reduced to 2.5%	12/2012 (Sr. No.156)	
9	Titanium Dioxide	28- 2823 00 10	BCD – Reduced from 10% to 7.5%	12/2012 (Sr. No.150)	
10	Sintered natural Uranium Dioxide/Sintered Uranium dioxide Pellets	28- 2844 20 00	BCD – Reduced from 7.5% to NIL	12/2012 (Sr. No.163)	Provided use in the production of Nuclear Power
11	Six Life Saving drugs/vaccines and their bulk drugs used in the manufacture of said drugs	30	BCD at a concessional rate of 5%	12/2012 (Sr. No.176 to 181)	
12	Probiotics	30- 3002 90 30	BCD – Reduced from 10% to 5%	12/2012 (Sr. No.195)	
13	Specified Water Soluble	31	BCD – Reduced from 7.5% to 5%	12/2012 (Sr. No.202)	
14	Liquid Fertilizers	31	BCD – Reduced from 5% to 2.5%	12/2012 (Sr. No.202)	
15	Triband Phospher	32- 3206 50 00	BCD- Fully Exempted	12/2012 (Sr. No.209)	
16	Organic/Inorganic Coating Material	32- 3209	BCD – Reduced from 10% to 5% on actual user	12/2012 (Sr. No.212)	Provided for manufacture of Electrical Steel on

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
			basis		actual user basis
17	Isolated Soya Protein	35- 3504 00 91	BCD – Reduced from 15% to 10%	12/2012 (Sr. No.216)	
18	Super Absorbent Polymer imported for use in the manufacture of Adult Diapers	39- 3906 90 90	BCD – Reduced from 7.5% to 5% along with NIL SAD on actual user basis	12/2012 (Sr. No.242)	Provided imported for use in the manufacture of Adult Diapers
19	Pneumatic Tyres (New or Retreated) for Aircraft	40	BCD & Additional Customs – Fully Exempted	12/2012 (Sr. No.249 & 250)	
20	Wood in Rough	44- 4403	Fully exempted from Special CVD	21/2012 (Sr. No.56)	
21	Waste Paper	47- 4707	BCD- Fully Exempted	12/2012 (Sr. No.262)	
22	Wool Waste	51- 5103	BCD – Reduced from 10% to 5%	12/2012 (Sr. No.279)	
23	Wool Tops	51- 5105	BCD – Reduced from 15% to 5%	12/2012 (Sr. No.281)	
24	Aramid thread/Yarn/Fabric for manufacture of Bullet proof Helmets for Defence & Police Personnel	54	BCD – Reduced from 10% to NIL with NIL CVD & NIL SAD	11/1012 (Sr. No.16)	
25	Hydrophilic Non-Woven, Hydrophobic Non-Woven imported for use in the manufacture of Adult Diapers	56- 5603 11 00	BCD – Reduced from 10% to 5% with 5% CVD & NIL SAD on actual user basis	12/2012 (Sr. No.295)	Provided imported for use in the manufacture of Adult Diapers on actual user basis
26	Prime quality cold rolled sheets of grain oriented (CRGO) Silicon electrical steel	72- 7225 11 00 or 7226 11 00	Exempted from Special CVD	21/2012 (Sr. No.79)	

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
27	Pipes & Tubes for use in manufacturers of boilers	73	BCD – Reduced from 10% to 7.5%	12/2012 (Sr. No.335)	Provided for use in the manufacturer of boilers
28	Brass Scrap	74- 7404 00 29	Exempted from Special CVD	21/2012 (Sr. No.80)	
29	Marine Seawater Pumps with fiber Impellers & Automatic fish/prawn feeder	84	BCD – Reduced from 10% to 5%	12/2012 (Sr. No.348)	
30	Specified Agriculture Machinery viz. Sugarcane Planter, Root or tuber crop harvesting machines & Rotary tiller/ weeder	84	BCD – Reduced from 7.5% to 2.5%. BCD @2.5% in case of parts & components required for manufacture of these items.	12/2012 (Sr. No.399)	
31	Food grains & sugar under project imports scheme	84	Concessional Import Duty of 5% BCD along with NIL CVD & SAD presently applicable	12/2012 (Sr. No.515) & 17/2012	This scheme is being extended for installation of mechanized handling systems & pallet racking systems in mandis & warehouses for horticulture produce.
32	Shuttle less looms, parts/ components of shuttle less looms by actual users for manufacture specified silk machinery	84	BCD- Fully Exempted	12/2012 (Sr. No.406)	Provided the existing concessional duty rate extended to specified textile machinery ids being restricted only to new textile machinery.

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
33	Raw materials, intermediates required for the manufacture of parts of blades for rotors of wind operated generators	84	BCD at a concessional rate of 5%	12/2012 (Sr. No.362)	
34	Tunnel boring machines and parts and components thereof for use in the assembly of tunnel boring machines	84	BCD- Unconditionally fully exempted along with additional duty of customs (CVD)	12/2012 (Sr. No.397)	
35	Tunnel Excavation & Lining equipment consisting of drilling Jumbos, Loaders, Tunnel excavators, concrete machines & 3 stage Crushers for use in the highway development projects	84	BCD & CVD- Fully Exempted	12/2012 (Sr. No.368)	
36	Power weeding machine for coffee plantation, grinder, processing machines, sprayers, packaging machine, bagging machine & mechanical harvester	84	BCD – Reduced from 7.5% to 5%	12/2012 (Sr. No.384)	
37	Coffee vending machine and brewing machines other than of a kind used for domestic purpose	84	BCD – Reduced from 10% to 5%. BCD- 2.5% is also being provided to parts required for the manufacture of	12/2012 (Sr. No.385)	

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
			such machines		
38	Mobile Handsets including cellular phones their parts, components and sub-parts of parts and components required for manufacture of Memory cards for mobile phones	85	Full exemption is granted on BCD & Additional customs duty	12/2012 (Sr. No.431)	
39	Mobile Handsets including cellular phones their parts, components and sub-parts of parts and components required for manufacture of Memory cards for mobile phones valid up to 31.3.13	85	Full exemption from Special Additional Duty (SAD)	21/2012 (Sr.No.5)	
40	LEDs Lamps & LED required for manufacture of such lamps	85	SAD- Fully Exempted	21/2012 (Sr.No.90)	
41	LCD and LED TV panels for 20inches & above	85	BCD- Fully exempted	12/2012 (Sr.No.432)	
42	Parts and components of Digital cameras capable of recording videos with minimum resolution of 800*600 pixels, at minimum 23 frames per second for at least 30 minutes in a sequence using the maximum storage capacity	85	BCD- Reduced to 5% subject to actual user condition		

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
43	Lithium ion automotive battery for manufacture of Li ion battery packs for supply to hybrid/electric vehicle manufacture	85	BCD- Reduced from 10% to NIL along with CVD- Reduced from 10% to 6% and SAD- Reduced from 4% to NIL	12/2012 (Sr.No.438) and 21/2012 (Sr.No.6)	
44	Track machines & parts	86	BCD – Reduced from 10% to 7.5%.	12/2012 (Sr. No.436)	
45	Train protection & Warning systems	86	BCD – Reduced from 10% to 7.5%.	12/2012 (Sr. No.435)	
46	Parts of hybrid vehicles	87	BCD- Reduced from 10% to NIL, CVD- reduced from 10% to 6% & SAD- Reduced from 4% to NIL	12/2012 (Sr. No.440) & 21/2012 (Sr. No. 8)	
47	Imports of parts & testing equipment, by a third party maintenance repair, and Overhauling facility for aircraft	88- 8802	BCD & Additional Customs Duty- Fully Exempted	12/2012 (Sr. No.448)	
48	Import of Foreign going vessels for a period from 01.03.2011 to 17.03.2012	89	Unconditional exemption from CVD	Bill Entry	
49	Foreign going vessels imported into India	89	CVD – Fully Exempted	12/2012 (Sr. No.462)	It is subject to the payment of duty at the time of its conversion for coastal run
50	For Import of Dredgers into India on lease & contractual basis and on short term	89	CVD- Being rationalized on fulfillment of given condition	19/2012 & 20/2012	Provided Import into India on lease & contractual

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
	basis				basis & on short term basis.
51	Dredgers	89	SAD- Fully Exempted	21/2012 (Sr. No.97)	
52	Polypropylene, Stainless Steel strip and stainless steel capillary tube for manufacture of Syringe, needle, catheters and cannulae on actual user basis	90	BCD- Reduced to 2.5% along with 6% CVD & NIL SAD	12/2012 (Sr. No.475)	Provided it should on the actual user basis.
53	Stainless steel tube & wire, cobalt chromium tube, Hayness Alloy-25 and Polypropylene mesh required for manufacture of Coronary stents and artificial heart valve on actual user basis	90	Full exemption from- BCD, CVD & SAD	12/2012 (Sr. No.476)	Provided it should on the actual user basis
54	Parts of Blood pressure Monitors and blood glucose monitoring systems	90	BCD- Reduced to 2.5% along with 6% CVD & NIL SAD	12/2012 (Sr. No.477)	Provided it should be on the actual user basis
55	Survey(DGPS) instruments, 3D modeling software for ore body simulation cum mine planning & exploration equipment	90	BCD- Reduced to 2.5% ad valorem	12/2012 (Sr. No.489)	
56	Initial setting up as well as substantial expansion of all fertilizers projects for a period of 3 Yrs i.e., upto 31.3.2015	98	BCD- Reduced to NIL	12/2012 (Sr. No.506)	
57	Capital	98	BCD- Reduced	12/2012	

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
	goods/equipments required for setting up or substantial expansion of iron ore pellet plants & beneficiation plants		to 2.5%	(Sr. No.506)	
58	Coal mining projects	98	Full BCD-Exemption	12/2012 (Sr. No.506)	

2.2 Enhancement or Imposition of Duty

In the following cases either there is enhancement of duty or imposition of duty:

Sr.No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
1	Gold Ores & Concentrates for use in manufacture of Gold	26	BCD – Increased from 1% to 2%	12/2012 (Sr. No.116)	Provided used in the manufacture of Gold
2	Chromium Ores & Concentrates, all sorts	26	BCD (ED) – Enhanced from Rs. 3000 per tonne to 30% Ad valorem	Clause 128 read with 4 th Schedule to Finance Bill 2012	
3	Boric Acid	28- 2810 00 20	BCD – Enhanced from 5% to 7.5%	12/2012 (Sr. No.150)	
4	Gold dore bars having gold content not exceeding 95%	71	BCD – Increased from 1% to 2%	12/2012 (Sr. No.318)	Provided imported for refining & manufacturing serially numbered gold bars in India
5	Gold bars other than Tola bars having gold content not below 99.5%	71	BCD – Increased from 2% to 4%	12/2012 (Sr. No.321 & 323)	Provided bearing manufacturer's or refiner's engraved serial number

Sr.No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
					& weight expressed in metric units
6	Gold in any form other than above, including toal bars & ornaments, but excluding ornaments studded with stones or pearls	71	BCD – increased from 5% to 10%		
7	Platinum	71	BCD – Increased from 2% to 4%	12/2012 (Sr. No.328)	
8	Cut & Polished Coloured Gemstones	71	BCD-prescribed at 2%	12/2012 (Sr. No.313)	
9	Flat rolled products of non-alloy steel whether or not clad, plated or coated	72-7208, 7209, 7210, 7211, 7212	BCD – Increased from 5% to 7.5%	12/2012 (Sr. No.334)	
10	Poly laminated aluminum tape & poly laminated steel tape	85	Exemption withdrawn	15/2012	
11	Specified raw materials for use in electronics/IT industry	85	Exemption withdrawn	16/2012	
12	Digital cameras capable of recording videos with minimum resolution of 800*600 pixels, at	85	BCD @10% is imposed	15/2012 and	

Sr.No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
	minimum 23 frames per second for at least 30 minutes in a sequence using the maximum storage capacity				
13	CBUs of motor vehicles with FOB value more than US\$ 40000 & with engine capacity more than 3000cc for petrol-run vehicles & more than 2500cc for diesel run vehicles	87	BCD – Increased from 60% to 75%.	12/2012 (Sr. No.437)	
14	Bicycles in fully built condition as well as in form of CKD/SKD kits	87	BCD – Increased from 10% to 30%	Bill Entry	
15	Bicycles parts & components	87	BCD – Increased from 10% to 20%.	12/2012 (Sr. No.444)	

3. Legislative Changes

3.1 Amendment in Method of Computation of Customs Duties

The method of computation of Education Cess and Secondary & Higher Education cess on imported goods is being simplified. Currently, these cesses are first charged on the CVD portion of customs duty and thereafter on the aggregate of customs duties (excluding special CVD). The portion of cesses leviable on the CVD portion of customs duty is

being exempted so as to avoid computation of such cesses twice. To explain this amendment better please refer to the following illustration-

Illustration:

		Present	Proposed
A	Assessable value (CIF + Landing Charges)	100	100
B	Basic customs duty (BCD) 10%	10.00	10.00
C	Value for CVD (A+B)	110.00	110.00
D	CVD equivalent to central excise duty 10%	11.00	11.00
E	Educational Cess on CVD 2%	0.22	0
F	Sec. and Higher Educational Cess 1%	0.11	0
G	Customs duty for calculation of Cess	21.33	21
H	Customs Educational cess 2%	0.43	0.42
I	Customs Secondary and higher educational cess 1%	0.21	0.21
J	Value for SAD	121.97	121.64
K	SAD @ 4%	4.88	4.865
	Total Duty	26.85	26.495

3.2 Matters relating to Special Additional Duty (SAD)

3.2.1 Declaration of Local VAT TIN by Importer

A condition is being inserted in Notification No.21/2012-Customs dated 17th March, 2012 requiring the importer of specified goods to declare the State of destination where the goods are intended to be sold for the first time after import and the VAT registration number. This condition would apply to such goods imported on or after 1st May, 2012.

3.2.2 Relaxation for utilization of SAD balance

CENVAT Credit Rules are being amended to permit transfer of unutilized credit of SAD lying in balance at the end of each quarter to other registered premises of the same manufacturer. This change would come into effect from 1.4.2012. [Notification No.21/2012 –CE (NT) dated 17th March, 2012]

3.3 Baggage Allowance

The duty-free allowance under the Baggage Rules is being increased from Rs.25,000/- to Rs.35,000/- for passengers of Indian origin and from Rs.12,000/- to Rs.15,000/- for children upto 10 years of age.

3.4 Amendments to Customs Act, 1962

Effective from the date on which President gives the Assent to the Finance Bill, 2012

3.4.1 Penal provisions in relation to Duty Credit Scrips

A new section 28AAA is being inserted to provide for recovery of duties, from the person to whom the instrument such as duty credit scrips was issued, where the instrument was obtained by means of collusion or wilful mis-statement or suppression of facts by the such person without prejudice to any action that may be taken against the importer.

Section 28BA is being amended to make the provisions relating to provisional attachment of property applicable to the proposed Section 28AAA.

3.4.2 Provisions to notify electronic payment of Customs Duty

Section 47 is being amended to insert a new proviso therein to provide that the Central Government may, by notification in the official gazette, specify the class or classes of importers who shall pay customs duty electronically.

3.5 Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 - (Notification No.22/2012 dtd.17th March 2012) – Effective from 17th March 2012

The Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 is being amended to further liberalize and simplify the procedure. The important changes are as under:

1. Eligibility Certificate can be obtained for a period not exceeding a year instead of consignment wise or quarterly certificate at present;
2. Permitting re-export of unused/ rejected goods imported at concessional duty under the said Rules with the prior permission of the jurisdictional Assistant Commissioner of Deputy Commissioner of Central Excise, as the case may be, subject to the condition that-
 - Such re-export takes place within six months from the date of importation;
 - The re-export value should not be less than the value of the imports.
3. Maintenance of separate accounts for these rules should not be insisted upon as long as the records maintained by the importer contain the requisite information.



INSPIRATION PILL

Winston Churchill

Success is going from failure to failure without a loss of enthusiasm.

Theodore Roosevelt

Whenever you are asked if you can do a job, tell 'em, 'Certainly, I can!' Then get busy and find out how to do it.

Anonymous

There is less to fear from outside competition than from inside inefficiency, discourtesy and bad service.

J.C. Penney

I am grateful for all my problems. I became stronger and more able to meet those that were still to come.

Best Regards

CA.Ashwin K.Shah
CA.Shrenik A.Shah