

UNION BUDGET 2 0 1 3 - 1 4



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PREFACE

Dear Reader,

We are happy to present to you the 4th Edition of our compilation on the Union Budget. The compilation summarizes the relevant amendments in relation to Direct and Indirect Taxes proposed by Budget 2013. 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 4 parts. Each of the said parts has its own executive summary for your ready reference.

Budget 2013 is popularly being referred to as a 'Welfare Budget'. With a service tax amnesty scheme, surcharge on the super rich, improved & stringent compliance mechanisms, etc. the Budget looks to meeting its Welfare objectives. GST, DTC and other modern day tax practices and regulations are still doing the rounds of the political circles & are very much a work in progress. One can only hope that these reforms be brought about in the near future.

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 2013-14.

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 23rd 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 2013. It is not intended to advertise or publicise the firms or the services rendered in any way.

TABLE OF CONTENTS

S. No.	Particulars	Part Ref
1	Income Tax Amendments	I
2	Service Tax Amendments	II
3	Central Excise Amendments	III
4	Customs Duty Amendments	IV

PART I – INCOME TAX**EXECUTIVE SUMMARY**

Sr.	Description of Amendments	Page
1	Rates of Income Tax	
1.1	Rates of Income Tax in case of non-corporate assessees	2
1.1.1	Basic slab rates	2
1.1.2	Surcharge on Income Tax (Super Rich Tax)	2
1.1.3	Education Cess	2
1.1.4	Tax Rebate in case of resident individuals	3
1.2	Rates of Income Tax in case of firms & LLP's	3
1.3	Rates of Income Tax in case of Co-operative Societies	3
1.4	Rates of Income Tax in case of Domestic companies	4
1.5	Rates of Income Tax in case of companies other than Domestic companies	4
2	Amendments relating to Income from House Property	
2.1	Aggregate Deduction in respect of housing loan interest for first home buyer	5
3	Amendments relating to Business Income	
3.1	Commodities Transaction Tax (CTT) and deduction thereof	5
3.2	Computation of income in case of transfer of immovable property in certain cases	6
3.3	Additional depreciation in case of Specified Company	7
4	Amendments relating to Capital Gains	
4.1	Definition of 'capital asset' amended	7
4.2	Reduction in the rate of Securities Transaction Tax ('STT')	8
5	Amendments relating to Income from other sources	
5.1	Taxability of immovable property received for inadequate consideration	9
5.2	Lower rate of tax on Dividends received from foreign companies to continue	10
5.3	Removal of cascading effect of Dividend Distribution Tax ('DDT')	10
5.4	Distribution Tax on buy-back of shares by Unlisted companies	11
5.4.1	Tax on Capital Gains arising on Buy Back	11
5.5	Tax on Royalties and Fees for technical services (FTS)	12
5.6	Tax Residency certificate not enough	12
5.7	Higher DDT on Income Distribution by specified MF	12
6	Amendments relating Deductions & Exemptions	
7	Amendments relating to TDS/ TCS [Chapter XVII-B]	
7.1	TDS on Transfer of immovable property	15
7.2	Concessional rate of TDS on interest in case of certain Infrastructure bonds	16
7.3	Frequently required TDS Rates for AY 2014-13	16
8	Other procedural amendments	
8.1	Matters relating to Wealth Tax	17
8.1.1	Electronic filing of return of wealth	17
8.1.2	Definition of urban land expanded	17
8.2	Return filed without payment of Tax	17
8.3	Application of seized assets	18
8.4	Direction for Special Audit	18
8.5	Period of limitation for assessments and re-assessments	19
8.6	Penalty for non-filing of Annual information Return	20
8.7	Conclusion	21

1. Rates of Income Tax

1.1 In the case of Non-Corporate Assessee Other than Firms/LLPs/Co-operative Societies

1.1.1 Basic Slab Rates

For Individuals (Other than Senior Citizen) / HUF/ AOP/ BOI/AJP like Trusts

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)	AY 2013- 2014 (01.04. 2012 to 31.03.2013)
0 – 200000	NIL	NIL
200001 – 500000	10%	10%
500001 – 1000000	20%	20%
1000001 +	30%	30%

For Individuals (being Senior Citizen Assesseees)

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)	AY 2013- 2014 (01.04. 2012 to 31.03.2013)
	>=60 years	>=60 years
0 – 250000	NIL	NIL
250001 – 500000	10%	10%
500001 – 1000000	20%	20%
1000001 +	30%	30%

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

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)	AY 2013- 2014 (01.04. 2012 to 31.03.2013)
0 – 500000	NIL	NIL
500001 – 1000000	20%	20%
1000001 +	30%	30%

1.1.2 Surcharge on Income Tax (Super Rich Tax)

The above Income Tax shall be increased by a surcharge of 10% of Tax for persons whose total taxable income greater than 1 Crore.

1.1.3 Education Cess

The above income tax and surcharge (where ever applicable) shall be increased (in every case) by an education cess @ 2% of and higher secondary cess @ 1% of income tax.

1.1.4 Tax Rebate in case of Resident Individuals

With a view to provide tax relief to the resident individual tax payers whose total taxable income is less than or equal to Rs.5 Lakhs the bill proposes¹ to provide rebate of amount of income tax payable or Rs 2000, whichever is lower. Accordingly, any resident individual having income of Rs 2.20 Lakhs will not be required to pay any tax.

[Shall be effective from AY 2014-15]

1.2 In the case of Firms & LLPs

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)	AY 2013- 2014 (01.04. 2012 to 31.03.2013)
Where total income < 1 Crore	30% + 3% Cess = 30.90%	30% + 3% Cess = 30.90%
Where total income > 1 Crore	30% + 10% SC + 3% Cess = 33.99%	30% + 3% Cess = 30.90%

1.3 In the case of Co-operative Societies

a. With Total Taxable Income of less than or equal to Rs.1 Crore

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)	AY 2013- 2014 (01.04. 2012 to 31.03.2013)
0 – 10000	10%	10%
10001 - 20000	20%	20%
Above 20000	30%	30%

Tax computed as above shall be increased by Cess @ 3%.

b. With Total Taxable Income of more than Rs.1 Crore

On the income tax computed as per (a) above there will be added a Surcharge of 10% on such income tax. The income tax derived after such addition will be further increased by Cess @ 3%. So for example if a co-operative society has got total taxable income of Rs.1,05,00,000/-. The tax thereon will be computed as under:

Taxable Incomes	Tax Rate	Tax Payable
0 – 10000	10% of 1st 10000	1000
10001 - 20000	20% of Second 10000	2000
Above 20000	30% of balance	3144000
Net Tax		3147000
Add: Surcharge @ 10%		314700

¹ Section 87A proposed to be inserted

Part I – Income Tax

Add: Cess @ 3%		103851
Total Tax Payable		3565551

1.4 In the case of Domestic Companies

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)				AY 2013- 2014 (01.04. 2012 to 31.03.2013)			
	Tax	S/C	Cess	Total	Tax	S/C	Cess	Total
Where Total income upto 1 Crore	30%	0%	3%	30.90%	30%	0%	3%	30.90%
Where Total income > 1 Crore up to 10 Crore	30%	5%	3%	32.45%	30%	5%	3%	32.45%
Where Total income > 10 Crores	30%	10%	3%	33.99%	30%	5%	3%	32.45%

1.5 In the case of Companies Other Than Domestic Companies

Taxable Incomes	AY 2014- 2015 (01.04. 2013 to 31.03.2014)		AY 2013- 2014 (01.04. 2012 to 31.03.2013)	
	Royalties & Fees For Technical Services	On the balance, if any	Royalties & Fees For Technical Services	On the balance, if any
Where total income < 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 > 1 Crore up to 10 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%
Where total income > 10 Crores	50% + 5% S/C + 3% Cess = 54.075%	40% + 5% S/C + 3% Cess = 43.26%	50% + 2% Surcharge + 3% Cess = 52.53%	40% + 2% Surcharge + 3% Cess = 42.02%

2. Amendments relating to Income from House Property

2.1 Aggregate Deduction in respect of housing loan interest for first home buyers [S. 80EE]

Existing provisions² allow a deduction in respect of interest paid on housing loan. The maximum amount that can be claimed is restricted with a threshold limit of Rs.1.50 Lakhs per year in the case of Self Occupied Properties. Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed in the Finance Bill for an aggregate ONE TIME additional deduction of interest of Rs.1,00,000 on loan taken for acquiring a house property. The deduction is subject to following conditions and restrictions-

- ❖ The loan is sanctioned by a financial institution or housing finance company during the year 2013-14
- ❖ Sanctioned amount does not exceed Rs. 25 Lakhs
- ❖ Value of the property does not exceed Rs. 40 Lakhs
- ❖ Assessee does not own any other residential house on the date of sanction
- ❖ Once deduction under this section is claimed no deduction can be claimed in respect of the interest under any other provisions of the Act
- ❖ If the interest in year 2013-14 is less than 1 Lakh the balance amount of deduction can be claimed in subsequent year 2014-15

It is proposed to make the above amendment applicable from 1st April 2014 (i.e. AY 2014 – 2015).

3. Amendments relating to Business Income

3.1 Commodities Transaction Tax (CTT) and deduction thereof

Presently, derivative transactions in the securities market attract a securities transaction tax (STT). In his budget speech the Finance Minister asserted that “there is not distinction between derivative trading in the securities market and derivative trading in the commodities market, only the underlying asset is different Accordingly, it is time to introduce Commodities Transaction Tax (CTT) in a limited way”.

²² Section 24 of the Income Tax Act 1961

The Finance Budget proposes to introduce CTT on non-agricultural commodities futures contracts @ 0.01% of the price of the trade payable by the seller.

Consequential amendment has been made under Section 36 of the Act to provide for a deduction of the CTT paid in respect of taxable transactions entered in the course of business.

It is proposed to make the above amendment applicable from a date to be notified by the Central Government on enactment of the Finance Bill, 2013

3.2 Computation of income in case of transfer of immovable property in certain cases [S. 43CA]

- ❖ Presently, when an immovable property (being a capital asset), is transferred for consideration less than the stamp duty valuation, then the capital gains arising there from are to be calculated by taking the stamp duty value as sales value³
- ❖ The Finance Bill proposes⁴ for similar provisions for sale of an asset (other than a capital asset)
- ❖ Accordingly, when stock in trade (being land or building or both) is sold at a value lower than the stamp duty value the higher value shall be considered while calculating business income
- ❖ Where part or whole of the consideration is in any mode other than cash then the stamp duty value as on date of agreement shall be considered (if the date of agreement and registration thereof are on different dates)
- ❖ This amendment would have its implications on stock of units held by real estate developers
- ❖ This amendment overrules the decision of the Madras High Court⁵ wherein it was held that provisions of section 50C shall not apply in case property is a business asset.

It is proposed to make the above amendment applicable from 1st April 2014 (i.e. AY 2014 – 2015).

³ Section 50C of the Income Tax Act 1961

⁴ Section 43CA proposed to be inserted

⁵ Commissioner of Income Tax vs. Thiruvengadam Investments Pvt. Ltd. [(2010) 320 ITR 345 (MAD)]

3.3 Additional depreciation in case of Specified Company [S. 32AC]

In order to provide an incentive to invest in the manufacturing sector the proposed provisions seek to allow an additional depreciation to specified companies. The rate of such additional depreciation and the conditions/restrictions that are being prescribed are as under:

- ❖ The person claiming the exemption must be a Company
- ❖ The Company must be engaged in the manufacture & production of any article or thing
- ❖ The Company acquires and installs any plant & machinery for use in the factory/residential accommodation, including office appliances, vehicles, computer and computer software
- ❖ The acquisition of assets is concluded between 01.04.2013 to 31.03.2015
- ❖ The sums invested by the Company in the above referred period must be in excess of Rs.100 crores
- ❖ Additional depreciation only once the investment of Rs.100 Crore as referred to above is concluded (so if the 100 Crore investment is not concluded by 31.3.14 - no additional depreciation will allowed in computing the profits/gains of the business for 2013-14)
- ❖ Additional Depreciation for 2013-14 will be equal to 15% of the cost of the assets
- ❖ Additional Depreciation for 2014-15 will be equal to 15% of the cost of the assets acquired & installed in 2014-15 (-) additional depreciation claimed in 2013-14
- ❖ Additional depreciation will be over and above the depreciation allowed & claimed by the Company u/s.32
- ❖ The additional depreciation shall be reversed in the event the assets acquired and installed are sold or otherwise transferred (not being by way of a scheme of amalgamation/demerger) before the end of 5 years from the asset's installation

It is proposed to make the above amendment applicable from 1st April 2014 (i.e. AY 2014 – 2015).

4. Amendments relating to Capital Gains

4.1 Definition of 'capital asset' amended [S. 2(14)]

Capital Gains arising out of transfer of a capital asset are liable to income tax under the head capital gains. Certain categories of properties including specified agricultural land have been excluded from the

Part I – Income Tax

definition of capital asset. Accordingly, gain arising out of transfer of such properties is out of the income tax net.

Existing provisions	Proposal
<p>Agricultural Land other than the following are not capital assets:</p> <ul style="list-style-type: none"> ❖ Land situated in an area comprised within the jurisdiction of a municipality or a cantonment board and has a population of 10000 or more ❖ Land situated in any area as notified by the Central Government (not being more than 8 kms. away from a municipality or a cantonment board) 	<p>Agricultural Land other than the following are not capital assets:</p> <ul style="list-style-type: none"> ❖ Land situated in an area comprised within the jurisdiction of a municipality or a cantonment board and has a population of 10,000 or more ❖ Land situated in any area not being more than 2 kms. away from a municipality or a cantonment board and which has a population > 10,000 but <= 1,00,000 ❖ Land situated in any area not being more than 6 kms. away from a municipality or a cantonment board and which has a population > 1,00,000 but <= 10,00,000 ❖ Land situated in any area not being more than 8 kms. away from a municipality or a cantonment board and which has a population > 10,00,000

It is proposed to make the above amendment applicable from 1st April 2014 (i.e. AY 2014 – 2015).

4.2 Reduction in the rate of Securities Transaction Tax ('STT')

The Honorable Finance Minister mentioned in his budget speech that STT has a stabilizing effect on markets even though it adds up to transaction cost. In this backdrop and continuing the trend in the last budget it is proposed to further reduce the rate of STT. Proposed and existing STT rates are tabulated here under:

Nature of security	Payable by	Proposal	Existing
Delivery based sale of unit	Seller	0.001%	0.10%

Part I – Income Tax

of a equity oriented fund on a Recognised Stock Exchange			
Sale of a unit of an equity oriented fund to a mutual fund	Seller	0.001%	0.25%
Sale of a futures in securities	Seller	0.01%	0.017%
Delivery based purchase of a unit of an equity oriented fund on a Recognised Stock Exchange	Purchaser	Nil	0.1%

It is proposed to make the above amendment applicable from 1st June 2013

5. Amendments relating to Income from other sources

5.1 Taxability of immovable property received for inadequate consideration [S. 56]

Existing provisions	Proposal
<ul style="list-style-type: none"> ❖ Immovable property received by an Individual or HUF without any consideration ❖ Stamp duty value exceeds Rs.50,000 ❖ Value of the immovable property chargeable in the hands of the receiver as Income from other sources 	<ul style="list-style-type: none"> ❖ The existing provisions are being expanded to cover cases where there is inadequate or no consideration. ❖ Where stamp duty value exceeds Rs.50,000 ❖ Transaction value is lower than the stamp duty value ❖ Differential Value (Stamp Duty Value - Transaction Value) of the immovable property will be chargeable in the hands of the receiver (that is the seller or transferee) as income from other sources ❖ In case of difference between agreement date and registration date the agreement date shall be considered in cases where the consideration is in a mode other

	than cash
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The proposed provisions were once before enacted in the same manner as forming part of Finance Act, 2009 but were subsequently dropped by Finance Act, 2010.

It is proposed to make the above amendment applicable from 1st April 2014 (i.e. AY 2014 – 2015).

5.2 Lower rate of tax on Dividends received from foreign companies to continue [S.115BBD]

With an incentive to attract repatriation of income earned by residents from investments made abroad Finance Act 2011 provided for taxing dividends received by an Indian company from specified foreign⁶ company @ 15%. This concessional rate was applicable to AY 2012-13 and further extended to AY 2013-14. The Finance Bill 2013 proposes to further extend this benefit for dividends earned in FY 2013-14 (AY 2014-15).

It is proposed to make the above amendment applicable from 1st April 2014 (i.e. AY 2014 – 2015).

5.3 Removal of cascading effect of Dividend Distribution Tax ('DDT') [S. 115-O]

- ❖ Dividends distributed by domestic company attracts DDT of 15%⁷ (16.22% effective rate with applicable surcharge and cess)
- ❖ DDT is to be paid on gross dividends paid less dividends received from domestic subsidiary (on which such subsidiary has paid DDT)
- ❖ This benefit is now proposed to be extended to dividends received from foreign subsidiaries (in which the Indian Company has a stake of more than 50%) on which the Indian Company has paid Tax U/s. 115BBD of the Income tax Act, 1961
- ❖ However, the cascading effect is not removed in cases where the tax has been paid under section 115BBD on dividends received from specified foreign companies not being subsidiaries.

⁶ A company in which the Indian Company holds 26% or more in the nominal value of the share capital of the foreign company [Sec. 115BBD(3)(ii)]

⁷ Section 115-O of the Income Tax Act, 1961

It is proposed to make the above amendment applicable from 1st June 2013

5.4 Distribution Tax on buy-back of shares by Unlisted companies [S. 115-QA]

The Finance Bill 2013 proposes to introduce a new Chapter XII-DA to provide for distribution tax in relation to buy-back of shares. The salient features of this new provision are enumerated here under:

- ❖ Applicable to buy-back in case of unlisted companies
- ❖ Buy-back shall have the meaning assigned under the provisions of Sec. 77A of the Companies Act 1956
- ❖ Rate of Distribution Tax shall be 20% payable by the Company making the buy back
- ❖ Distributed income/ Tax base for calculating the Tax = Consideration paid for buy-back – amount received by the company for issue of shares

It is proposed to make the above amendments applicable from 1st June 2013 (i.e. AY 2014 – 2015).

5.4.1 Tax on Capital Gains arising on Buy Back

Presently, capital gains arising from buy backs of unlisted shares are liable to tax @ 20% in the hands of the shareholders. Further to that, at the moment there are options of claiming partial or complete exemption from such tax liability by making eligible investments.

Along with the proposed imposition of the buyback distribution tax, as above, there is a proposal to exempt the income arising from such buy back in the hands of the shareholders. Since the gain in itself is exempted there is obviously no reason to make the aforesaid eligible investments.

Provisions of section 10(34A) propose to exempt the capital gains arising from such buy backs. This provision is being enacted so as to avoid double taxation of the income arising from such a buy back.

These provisions u/s.115QA & u/s.10 (34A) are in line with the provisions relating to dividend distribution tax (section 115O) & exemption on dividend received (section 10(34)).

5.5 Tax on Royalties and Fees for technical services (FTS) [S. 115-A]

Section 115A of the Income Tax Act, 1961 provides for taxation of income of a non-resident by way of Royalties/ FTS under an agreement entered after 31-03-1976. The proposed rates of tax applicable w.e.f. 01-04-2013 (AY 2014-15) are as under

Period	Proposed Rates	Existing Rates
For agreements on or before 31-05-1997	25%	30%
Agreements on or after 31-05-1997 but before 01-06-2005	25%	20%
Agreements on or after 01-06-2005	25%	10%

However, the higher rate of withholding provided by the above amendment shall be overridden by the lower rates of taxes negotiated in the (Double Taxation Avoidance Agreements) DTAA⁸

5.6 Tax Residency certificate not enough [S. 90(5) & 90A (5)]

The Finance Bill 2013 proposes to amend section 90 and 90A in order to provide that for the purpose of claiming benefits under the DTAA Tax residency certificate is necessary but not sufficient condition. Where on one hand this amendment signifies that the certificate is essential it on the other hand fails to describe or prescribe what other documents would amount to sufficient compliance of above referred provisions.

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

5.7 Higher DDT on Income Distribution by specified MF [S.115R]

[LEGEND - DDT = Dividend Distribution Tax & MF = Mutual Fund]

The Finance Bill 2013 proposes to bring the DDT rates for money market MF, liquid MF & all other MFs (not being equity oriented MF) at par with

⁸ DTAA = Double Taxation Avoidance Agreements

Part I – Income Tax

each other when distributing income to individuals & HUFs. In light thereof given hereunder is a tabulation of the DDT rates:

Nature of Funds distributing income to individual or HUF	Proposed DDT Rates	Existing DDT Rates
Money Market MF or Liquid MF	25%	25%
MF other than Money Market MF or Liquid MF or Equity Oriented MF	25%	12.5%

This move is certain to make competition between pure debt market funds & money market/liquid funds even stiffer. Nevertheless, it is important to note that income distribution as aforementioned by an Infrastructure Debt fund to Foreign Companies & other Non-residents will be liable to a concessional DDT rate of 5%. This provision is in line with the provision of TDS contained in section 194LC (covered in paragraph 6.2 hereunder).

It is proposed to make the above amendments applicable retrospectively from 1st June 2013 (i.e. AY 2014 – 2015).

6. Amendments relating Deductions & Exemptions

Amendments to provisions relating to exemptions from income tax and deductions under chapter VIA of the Act have been tabulated here under

Particulars	Proposals	Existing provisions
Exemption in respect of sums received on maturity of Life Insurance policies [S. 10(10D)]	The 10% criterion is increased to 15% in cases of persons suffering from severe disability ⁹ The condition of premium not exceeding 10% remains unchanged for other persons.	The proceeds are exempted only premium paid < 10% of actual capital sum assured in all cases.
Deduction in respect of premiums paid towards Life Insurance [S. 80C]	The 10% criterion is increased to 15% in cases of persons suffering from severe disability The condition for other persons remains the unchanged	Premium paid is eligible for deduction on the condition that premium does not exceed 10% of capital sum assured.

⁹ As referred in Section 80U and Section 80DDB of the Income Tax Act, 1961

Part I – Income Tax

Particulars	Proposals	Existing provisions
Scope of deductions for contributions made towards Health Schemes widened [S. 80D]	The eligibility has been extended in respect of other schemes of the Central & State Governments (As may be notified)	Deduction available in respect of amount paid to Central Government Health Scheme to keep in force the insurance on health (by individual)
Expansion of scope of deduction under relating to investments under the Rajiv Gandhi Saving Scheme [S. 80CCG]	<p>50% deduction on the amounts invested in eligible securities</p> <p>Investments in specified listed shares and listed units of equity oriented funds eligible for claiming deduction under this section</p> <p>Deduction can be claimed for 3 years (that is eligible investments can be made for 3 yrs.)</p> <p>The eligibility limit of Gross Total Income has been raised to Rs.12 Lakhs</p>	<p>50% deduction in respect of amount invested in Rajiv Gandhi Equity Savings Scheme¹⁰</p> <p>Only investments in specified listed shares eligible for claiming deduction under this section</p> <p>Deduction can be claimed for only 1 year (that is eligible investments can be made only once)</p> <p>The eligibility limit of Gross Total Income was prescribed as Rs.10 Lakhs</p>
Deductions in respect of donations [S. 80G]	100% deduction for donations to NCF U/s 80G(1)(i) of the Income Tax Act, 1961	50% deduction for donations to National Children's Fund (NCF)
Contribution to Political parties/electoral trust [S. 80GGB/80GGC]	Provision amended so as to place a restriction on cash contributions	No payment mode restriction in place

¹⁰ Notified scheme under Section 80CCG of the Income Tax Act, 1961

Part I – Income Tax

Particulars	Proposals	Existing provisions
Exemption in respect of Keyman Insurance [S.10(10D)]	The provisions are proposed to be further amended to disallow the exemption in cases where Keyman insurance policies are assigned as insurance policies to the key man whether with or without consideration	Any sum received under a life insurance policy is exempted subject to conditions contained in the section. Amount received under a Keyman Insurance policy is not covered by this exemption

It is proposed to make the above amendments applicable from 1st April 2014 (i.e. AY 2014 – 2015).

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

7.1 TDS on Transfer of immovable property [S. 194-IA]

The Finance Bill 2012 proposed to introduce withholding tax provision obliging purchasers of immovable properties to do TDS from payments to seller. The memorandum to the said bill also provided for introducing a mechanism for making payment of such TDS without obtaining Tax Deduction Account Number (TAN). However, the said provision was later omitted.

The Finance Bill 2013 proposes to re-introduce similar Sec. 194-IA. The salient features of this provision are enumerated here under

- ❖ Applicable to transactions involving sale/ transfer of immovable property, other than agricultural land that is more than 6 kms away from the Municipal Limits or Cantonment Board.
- ❖ Such sale/transfer is by a resident
- ❖ The transferee (i.e. the purchaser) shall do TDS @1% of the total consideration
- ❖ No TDS if the consideration for transfer is less than or equal to Rs.50 Lakhs
- ❖ The TDS provisions envisaged herein will not apply to cases of compulsory acquisition of immovable property under any law for the time being in force
- ❖ These provisions in their turn will ensure that the transferor and transferee hold a valid PAN and also ensure that such transactions do not go unreported
- ❖ Unlike the similar proposal in the Finance Bill 2012, this budget does not provide appropriate clarification on how the TDS amount shall be deposited by the transferee who otherwise is not required to obtain a TAN. It would be imperative that necessary procedural clarifications are brought in place.

It is proposed to make the above amendments applicable from 1st June 2013

7.2 Concessional rate of TDS on interest in case of certain Infrastructure bonds [S. 194LC]

Interest paid by an Indian Company on Foreign currency loans or Long-term Infrastructure bonds attract TDS @ concessional rate of 5% under the existing provisions if the amount is borrowed in foreign currency from non-residents (not being companies) and foreign companies.

It is proposed to extend the benefit of concessional rate of TDS in case of investment in Long-term infrastructure bonds through Indian Rupee Denominated bank accounts if following conditions (other than the conditions already specified in the said section)

- ❖ Non Resident or a foreign company deposits foreign currency in a designated bank account
- ❖ The sum deposited is converted in Indian Rupees and utilized for investment in long-term infrastructure bonds issued by an Indian Company
- ❖ Designated Bank Account means bank account solely opened for the purpose of making above investment
- ❖ Presently, above investments made by Non-Residents in Indian Rupees are subjected to TDS @ 40%. This move would definitely help foreign investors, non-residents & NRIs to invest at a lower withholding rate

It is proposed to make the above amendments applicable from 1st June 2013

7.3 Frequently required TDS Rates for AY 2014-13

Sec	Nature of payment	Annual Threshold	TDS Rate for payment to Ind/ HUF	TDS rate for payments to others
192	Salaries	NA	Average rate	NA
194A	Interest other than interest on securities (By Bank)	10,000	10%	10%
194A	Interest other than interest on securities (By others)	5,000	10%	10%
194C	Contracts – Single transaction	30,000	1%	2%
194C	Contracts – Annual Aggregate	75,000	1%	2%

Part I – Income Tax

Sec	Nature of payment	Annual Threshold	TDS Rate for payment to Ind/ HUF	TDS rate for payments to others
194H	Brokerage/ Commission	5,000	10%	10%
194I	Rent – Immovable property	1,80,000	10%	10%
194I	Rent – Machinery, Furniture, equipment	1,80,000	2%	2%
194-IA	Purchase of Immovable Property	50 Lakhs	1%	1%
194J	Professional Fees	30,000	10%	10%
194J	Amounts paid to Directors (not being employees of the co.)	NA	10%	10%
194LA	Compensation on compulsory acquisition of immovable property	2,00,000	10%	10%
206AA	Where deductee does not hold PAN or the PAN is invalid	Various	20%	20%

8. Other procedural amendments

8.1 Matters relating to Wealth Tax

8.1.1 Electronic filing of return of wealth

The Finance Bill 2013 proposes to insert enabling provisions [S. 14A and 14B] to facilitate electronics filing of paperless/annexure-less wealth tax return.

It is proposed to make the above amendments applicable from 1st June 2013

8.1.2 Definition of urban land expanded

For the purpose of section 2(ea)(5) the definition of urban land has been expanded & aligned with a similar position taken under the Income Tax Act, 1961. Please refer to paragraph 3.1 for details on the change. The amendment in its turn will bring more urban land into the wealth tax net.

8.2 Return filed without payment of Tax [S. 139(9)]

The Finance Bill 2013 proposes to provide that any return of income filed without payment of self assessment tax along with interest, shall be treated as a defective return.

It is proposed to make the above amendments applicable from 1st June 2013

8.3 Application of seized assets [S. 132B]

The existing provisions contained in section 132B of the Income-tax Act, inter alia, provide that seized assets may be adjusted against any existing liability under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default.

Various courts have taken a view that the term “existing liability” includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty, which may arise subsequent to the assessment pursuant to search.

Accordingly, it is proposed to amend the aforesaid section so as to clarify that the existing liability does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act.

It is proposed to make the above amendments applicable from 1st June 2013

8.4 Direction for Special Audit [S. 142(2A)]

The existing provisions contained in sub-section (2A) of section 142 of the Income-tax Act, inter alia, provide that if at any stage of the proceeding, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The expression “nature and complexity of the accounts” has been interpreted in a very restrictive manner by various courts.

It is, therefore, proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts,

volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

It is proposed to make the above amendments applicable from 1st June 2013

8.5 Period of limitation for assessments and re-assessments [S. 153]

Under the existing provisions of clause (iii) of *Explanation 1* to section 153, the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit, is excluded in computing the period of limitation for the purposes of assessment or reassessment. However, the existing provision does not provide for exclusion of time in case the direction of the Assessing Officer is set aside by the court.

It is proposed to amend section 153¹¹ so as to provide that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under Section 142(2A) and ending with the last date on which the assessee is required to furnish a report of such audit under that Section; or

Where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

Similarly, the existing provisions contained in clause (viii) of *Explanation 1* to section 153 provide for exclusion of the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of one year,

¹¹ Clause (iii) of Explanation to Section 153 of the Income Tax Act, 1961

whichever is less, in computing the period of limitation for the purposes of section 153.

At times more than one reference for exchange of information is made in one case and the replies from the foreign Competent Authorities are also received in parts. In such cases, there will always be a dispute for counting the period of exclusion i.e. whether it should be from the date of first reference for exchange of information made or from the date of last reference. Similar dispute may also arise with regard to the date on which the information so requested is received. With a view to clarify the above situation, it is proposed to amend the aforesaid clause (viii) so as to provide that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153. Similar amendments are also proposed in the Explanation

It is proposed to make the above amendments applicable from 1st June 2013

8.6 Penalty for non-filing of Annual information Return [S. 271FA]

Section 285BA mandates furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2) thereof. Sub-section (5) of the section empowers the Assessing Officer to issue notice if the annual information return has not been furnished by the due date.

The existing provisions contained in section 271FA of the Income-tax Act provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is proposed to amend the aforesaid section so as to provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the

income-tax authority prescribed under sub-section (1) of the said section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues

It is further proposed to provide that where such person fails to furnish the return within the period specified in the notice under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

It is proposed to make the above amendments applicable from 1st April 2014

8.7 Conclusion

The FM in his budget speech has promised early enactment of safe harbour rules. The recent times have witnessed increasing disputes in the Transfer Pricing (TP) arena and the recent budget proposal to introduce Safe Harbour Rules is an effective step to achieve certainty in this regard. “Safe Harbour” means circumstances in which the Tax Authorities shall accept the transfer price declared by the assessee without undertaking a detailed scrutiny. Basic intention behind the introduction of the Rules is to reduce the impact of judgmental errors in determination of transfer price of international transactions. Stability in tax policies have the potential of enhancing investor confidence, especially that of foreign investors.

DTC (Direct Tax Code) is expected to be tabled before the House in its renewed avatar very soon.

One hopes that path breaking and modern tax laws/regulations like DTC/Safe Harbour Rules see the light of day soon enough in the present global scenario.

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**PART II - SERVICE TAX
EXECUTIVE SUMMARY**

S. No.	Particulars	Page No
2.1	Introduction	2
2.2	Rate of Service Tax & Amendment in Key Definitions	2
2.2.1	Applicable Rate of Service Tax	2
2.2.2	Definition of the term 'Manufacture' amended	3
2.3	New services in the negative list	3
2.4	Mega Exemption notification widened	4
2.5	Higher Tax on High-end constructions	6
2.6	Voluntary compliance encouragement scheme	7
2.7	Penalties	9
2.7.1	Upper limit set for Registration penalty	9
2.7.2	Personal liability of Directors, etc.	9
2.8	Other procedural changes	9
2.8.1	Incorrect invocation of extended period	9
2.8.2	Advance Ruling mechanism extended to resident public company	10
2.8.3	Term of imprisonment extended to cases where tax collected but not paid	10
2.8.4	Non-payment of collected tax made non-cognizable offence	10
2.8.5	Power to arrest where tax collected not paid	10
2.8.6	Condonation of delay in filing appeals	11

2.1 Introduction

The last budget witnessed the roll out of roadmap towards GST regime. With this basic intent the Government introduced the new regime of taxation of Services based on negative list thus providing a conducive environment for a nationwide GST regime. This years' Union Budget has not seen any major tax reforms. The reasons are evident in the Honorable Finance Minister's budget speech which is reproduced below:

“In a constrained economy, there is little room to raise tax rates or large amounts of additional tax revenues. Equally, there is little room to give away tax revenues or the tax base. It is a time for prudence, restraint and patience.”

A Glance of changes proposed are enumerated below:

- ❖ No change in the basic rate of Service Tax
- ❖ Definition of the term “manufacture” amended
- ❖ Two services added to the negative list
- ❖ Services under the Mega Exemption notification also amended
- ❖ Reduction in abatement rate to 70%¹ for luxury apartments
- ❖ Voluntary Compliance Encouragement Scheme ('VCES') introduced
- ❖ Penalty under Section 77 for non - payment of service tax or failure to obtain registration is restricted to INR 10,000 removing the penalty based on days of default
- ❖ New Section 78A introduced to impose penalty on directors and officials of the company for specified offences in cases of willful actions
- ❖ Other procedural changes

2.2 Rate of Service Tax & Amendment in Key Definitions

2.2.1 Applicable Rate of Service Tax

There is no change in the basic rate of Service Tax. The rate remains unchanged at 12.36%²

¹ Present abatement is 75% across the construction industry

² Including applicable Primary and secondary education cess

2.2.2 Definition of the term 'Manufacture' amended

The statute relating to service tax carries a separate definition of the expression 'process amounting to manufacture or production of goods'. Coupled with defining the said expression the legislature also provides for an entry under the negative list³ at clause (f) for any process as aforementioned stated. In accordance thereof '*process amounting to manufacture*' of any goods covered by the Central Excise Act, 1944 or of goods like alcoholic liquors, opium, Indian hemp, narcotic drugs & narcotics covered by the State Excise duty legislations were exempted from the levy of service tax.

The definition as it stands prior to the amendment proposed by this Budget does not cover '*process amounting to manufacture*' of some other goods that attract excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act 1955.

The definition of the expression '*process amounting to manufacture of any goods*' is proposed to be amended to cover all such goods as well. This was a much needed clarification for manufacturers of toileteries, cleansers, perfumes, etc.

2.3 Two new services added to the negative list

The negative list became effective after the last Budget. To have stability in the tax regime this budget proposes to include only following two services in the negative list.

❖ Vocational courses offered by institutes affiliated to the State Council of Vocational Training

Existing provisions⁴ exempt courses run by or approved by the National Council for vocational training and course run by an institute affiliated to the National Skill Development Corporation. The Bill proposes to extend this exemption to State Council for vocational training by amending the definition of the term "approved vocational education course⁵".

³ The negative list of services is contained in Section 66D of the Finance Act, 1994

⁴ Section 66D(I)(iii) of the Finance Act read with Section 65B(11) of the Act

⁵ Section 65B(11) of the Finance Act 1994

However the education services provided by institute affiliated to the National Skill Development Corporation have been excluded from the list

❖ **Testing activities in relation to agriculture and agricultural produce**

The existing provisions⁶ cover only “seed testing⁷” in the negative list of services. Now the word “Seed” has been omitted from the expression “seed testing”. As a result testing activities include all allied agricultural activities, directly relating to agricultural production like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes.

2.4 Services under the Mega Exemption notification also amended

[Amended vide Notification 3/2013-ST, dated 01-03-2013 w.e.f. 01-04-2013]

❖ Exemption in respect of certain services provided by an Educational Institution⁸ withdrawn:

Services provided to or by an educational institution by way of renting of immovable property or auxiliary educational services are fully exempt⁹ so far. Sr. No. 9 of the existing notification granting the said exemption has been amended and accordingly the word “Provided by” has been deleted¹⁰. As a result, now services provided by an educational institution by way of renting of immovable property or auxiliary educational services are fully taxable w.e.f. 01-04-2013.

❖ Copyrights¹¹ relating to Cinematographic films:

Temporary transfer of copyrights (for example, Satellite distribution, audio rights, etc) or permitting the use or enjoyment of a copyright relating to cinematographic films was fully exempt¹² so far. This budget has restricted this exemption only for exhibition of

⁶ Section 66D(d)(i) of the Finance Act 1994

⁷ Seed testing is basically done to evaluate the quality of the seeds

⁸ Section 66B(9) of the Finance Act 1994

⁹⁹ Notification No. 25/2012-ST, dated 20-06-2012

¹⁰¹⁰ Notification No. 3/ 2013-ST, dated 01-03-2013 w.e.f. 01-04-2013

¹¹ Section 66B(15) of the Finance Act 1994

¹² Notification No. 25/2012-ST, dated 20-06-2012

cinematograph films in a cinema hall or a cinema theatre¹³. This shall come into effect from 01-04-2013

❖ Exemptions in respect of restaurants:

Presently, restaurants having air-conditioning or central heating facilities with “liquor license” are liable to pay service tax so far. Effective 01-04-2013 this exemption has been limited only to restaurants not having air-conditioning facility in any part of the establishment at any time during the year. The pre-condition to tax only those A/C restaurants that serves liquor has been removed. Hence, once the restaurant is an A/C restaurant Service Tax shall apply.

❖ Exemption in relation to transport by Rail/ vessel/ road

Under the existing provisions transportation of certain goods by rail/ vessel are exempted. The exemption in respect of transport by rail/ vessel have been withdrawn in case following goods

1. Specified petroleum and products there of
2. Postal mail/ mail bags
3. Household effects

Further, the exemption in respect of transport by road has been expanded to include following classes of goods

1. Agricultural produce (entry made more wider)
2. Foodstuffs including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages
3. Chemical fertilizer and oil cakes
4. News paper or magazines registered with the Registrar of News Papers
5. Relief materials meant for victims of natural or man-made disasters, calamities, accidents of mishap
6. Defense or military equipments

❖ Exemption in respect of vehicle parking for general public

¹³ Notification No. 3/2013-ST, dated 01-03-2013 w.e.f. 01-04-2013

Services by way of vehicle parking to general public are exempted so far. Now this exemption will be withdrawn and the same will be fully taxable.

❖ Exemption in respect of Charitable organizations

Exemption limit prescribed for charitable organizations by way of charitable activities are presently exempted. Charitable activities have been defined to inter alia include service towards any other object of general public utility. This exemption however is exempted with a threshold of Rs.25 Lakhs. This special threshold has been removed w.e.f. 01-04-2013. Effectively, only general threshold exemption¹⁴ of Rs.10 Lakhs shall be available to these trusts.

2.5 Higher Tax on High-end constructions

Notification 26/2012-ST, dated 20-06-2012 which lays down the rates for abatement allows an abatement of 75% in case of services in relation to construction of buildings¹⁵ subject to attached conditions. With intent to enhance the tax burden on high end constructions the rate of abatement in such cases has been reduced there by increasing the effective rate of service tax from 3.09% to 3.71% with effect from 01-03-2013.

Description of the unit/ property	New abatement rate	Effective rate	Existing rate of abatement	Effective rate
Residential flat having carpet area up to 2000 sq. ft	75%	3.09%	75%	3.09%
Residential flat where amount charged < 1 Crore	75%	3.09%	75%	3.09%
Residential flat having carpet area > 2000 sq. ft and amount charged is > 1 Crore	70%	3.71%	75%	3.09%
All commercial constructions	70%	3.71%	75%	3.09%

¹⁴ Notification No. 33/2012-ST, dated 20-06-2012

¹⁵ Sr. No. 12 of the notification referred above

2.6 Voluntary Compliance Encouragement Scheme (VCES)

The Finance Bill 2013 proposes to introduce a scheme called Service Tax - Voluntary Compliance Encouragement Scheme¹⁶. The service providers who have not paid their service tax liabilities for any part of the period from 01.10.2007 to 31.12.2012 can opt for the scheme and be entitled for waiver of interest and penalties.

Scheme at a glance:

Effective date for the scheme	After enactment of the Finance Bill but shall be effective retrospectively from 01-03-2013
Basic eligibility	Nonpayment of Service Tax for the period 01-10-2007 to 31-12-2012 or any part there of
Which persons are not eligible to opt for this scheme	<ul style="list-style-type: none"> • Tax paid (interest unpaid) • Show Cause Notice issued on or before 01-03-2013. The only remedy in such cases would be to approach the settlement commission (subject to rules prescribed in such cases) • Liability admitted in returns but remains unpaid • Tax paid for an issue for which Show Cause has been issued for some other period • Cases where search, enquiry or investigation is conducted and is pending as on 01-03-2013 • Summons issued U/s 14 of the CE Act and inquiry is pending • Accounts, documents, etc have been called for but the inquiry is pending
Procedure for filing the declaration	<ul style="list-style-type: none"> • Declaration and Rules shall be published post Finance Bill 2013 is enacted • Due date for filing the declaration is 31-12-2013 • Special Officer shall be dedicated for

¹⁶ New Chapter VI inserted in the Finance Act 1994

	acceptance of declarations
Discharging the liability that has been declared	<ul style="list-style-type: none"> • First Installment of at least 50% of the liability to be paid by 31-12-2013 • Balance/ Second installment to be paid by 30-06-2014 • If first installment not paid in time no immunity can be claimed under this scheme • If first installment paid in time but second installment not paid in time it should be at the most paid by 31-12-2014 along with interest @ 18% for the period 01-07-2014 till the date of payment • Once payments are made as above assessee shall get immunity from: <ul style="list-style-type: none"> ○ Interest U/s 75 of the Act ○ Penalties ○ Prosecution U/c V of the Act
Conclusion of proceedings under the scheme	Once details of payments are intimated to the designated officer after filing of the declaration, the officer shall issue a discharge certificate

On going through the broad framework of the scheme it is apparent that the scheme intends to encourage tax evaders. The government perceives huge revenues from this scheme. At the other end it creates an imbalance with existing tax payers who are contesting hefty demands, interest and consequent penalties.

A similar scheme called "Extraordinary Tax Payer's Friendly Scheme" was introduced in the past. Whether existing tax payers can be granted immunity from penalty U/s 80 of the Finance Act 1994 was litigated and there have been decisions both, favorable¹⁷ and against¹⁸ the appellants

¹⁷ Dewal Tours and Travels v. CCE, Jaipur-II 2006-TIOL-470-CESTAT-DEL

¹⁸ Pankaj Oil Trading Corporation v. CCE [(2007) (6) STR 44 (DEL-TRI)]

2.7 Penalties

2.7.1 Upper limit set for penalty for delayed registration

Currently, there is no upper limit on the amount of penalty which can be imposed for delayed registration. Now maximum penalty of Rs.10,000/- is provided by amending section 77(1)(a). This amendment will be effective from the date of enactment of the Finance Bill, 2013.

2.7.2. Personal Penalty

Section 78A is being introduced, to provide for imposition of personal penalty on director, manager, secretary, or other officer of the company, who is in any manner knowingly concerned with specified contraventions. This amendment will be effective from the date of enactment of the Finance Bill, 2013.

2.8 Other procedural changes

2.8.1 Invocation of extended period of limitation under proviso to Sec. 73(1)

The initiation of any demand is by way of issue of a show cause notice ('SCN'). In the normal course a SCN needs to be issued within a period of 18 months¹⁹ from the relevant date. However, an exception to this general rule is provided for. The said time-limit can be extended in cases where the service tax has not been paid on account of fraud, collusion, and willful misstatement, suppression of facts with an intention to evade tax.

If the Courts find that in any case the extended period of limitation as invoked by the assessing authority is not sustainable because the charges of fraud, etc are not established, the Department cannot determine the liability even for the normal period of 18 months as referred above.

To plug this loop hole and to reverse the decision of the Supreme Court²⁰ Sec. 73(2A) is proposed to be inserted so that the Department can determine the liability. This amendment will be effective from the date of enactment of the Finance Bill, 2013.

¹⁹ Sec. 73(1) of the Finance Act 1994

²⁰ CCE v. Alcobex Metals [(2013) 153 ELT 241 (SC)]

2.8.2 Advance Ruling option open to Resident Public Company

As per the provisions of section 96A of the Act a notified person can become an applicant to Advance Ruling mechanism. The benefit of advance ruling is now being extended and a resident public limited company has been notified²¹ as an eligible applicant with effect from 01.03.2013.

2.8.3 Term of imprisonment extended in cases where Tax collected but not paid

Section 89 is amended to increase the term of imprisonment up to 7 years in the case any person collects an amount exceeding Rs.50 Lakhs as service tax and fails to deposit the same within the period for 6 month from the due date. This amendment will effective from the date of enactment of the Finance Bill, 2013

2.8.4 Where Tax collected is not paid offence is made cognizable [S. 90 inserted]

An offence may be a cognizable or a non-cognizable and bail able offence. A person cannot be arrested without court orders where an offence is non-cognizable. Section 89 enumerates list of punishable offences. The act of collecting service tax (exceeding Rs.50 Lakhs) and not depositing the same within 6 months of the due date is an offence under the above provision²². This offence has been recognised as a cognizable offence by introducing new section 90. The amendment will be effective from the date of enactment of the Finance Bill, 2013

2.8.5 Power to Arrest where Tax collected is not paid [S. 91 inserted]

Section 91 is being introduced to provide for power to arrest. Accordingly, Commissioner of Central Excise is empowered to authorize any officer of Central Excise not below the rank of Superintendent of Central Excise, to arrest a person for specified offence particularly nonpayment of collected service tax. The amendment will be effective from the date of enactment of the Finance Bill, 2013

²¹ Notification No. 4/2013-ST, dated 01-03-2013

²² Section 89(1)(d) of the Finance Act 1994

2.8.6 Condonation for delay in filing appeals

Section 86 is being suitable amended to permit the Appellate Tribunal to admit an appeal or permit the filing of memorandum of cross objections after the expiry of the relevant period in the case of an assessee's appeal also. This amendment will effective from the date of enactment of the Finance Bill, 2013.

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**PART III - CENTRAL EXCISE
EXECUTIVE SUMMARY**

S. No.	Particulars	Page Ref
1	Changes in Excise Duty ('ED') rates	
2	Chapter wise view of the Rate of ED	
2.1	ED Rate Enhancement	2
2.2	ED Exemption	3
2.3	ED Rate Reduction	4
3	Other Chapter Specific Changes	
3.1	ED on Readymade garments	5
3.2	ED on Prescribed Motor Vehicles and parts/accessories thereof	5
3.3	MRP based assessment on Specified Branded Medicaments	5
3.4	Meaning of Copper explained for Chapter heading 7409	6
4	Other Legislative Changes	
4.1	Central Excise Act, 1944	6
4.1.1	Relaxation of Prosecution Norms	6
4.1.2	Cognizable Offence	6
4.1.3	Recovery of money due to Government from third person	6
4.1.4	Modes of delivery of specified documents	6
5	Impact of Other Non-Tariff Notifications	
5.1.1	Recovery of Cenvat Credit wrongly taken	7
5.1.2	Advance Ruling provisions expanded	7
6	Conclusion	8

1. Changes in Excise Duty rates

No change in peak rates of Excise Duty. The excise duty rate structure will continue as stated hereunder:

		Tax Rates effective from 17.3.12	
2. Chapter- Excise Duty		2%	wise view of Rate Structure
		6%	
		12%	

There is no change in the rate structure in the case of goods covered by Chapters 1 to 10, Chapters 12 to 14, Chapters 16 to 18, Chapters 20 to 23, Chapters 26 to 29, Chapters 31 & 32, Chapters 34 to 38, Chapters 40 to 56, Chapters 58 to 60, Chapters 64 to 67, Chapters 69 & 70, Chapter 73 & 75, Chapters 77 to 84, Chapter 86 & 88, Chapters 90-96.

There is change in the basic rate structure in the case of goods as referred to in pts. 2.1 to 2.3 herein under.

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 1st March 2013

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

Chapter Reference	Particulars	Notification passed on 1st March 2013
Chapter 24	ED has been increased by 17%-18% from its present level for Cigarettes, cigars, cheroots & cigarillos by imposing an additional Ad Valorem Duty or Value based levy.	<i>Clause 92 read with the Sixth Schedule</i>
Chapter 25 & 68	ED from Rs. 30 per square meter to Rs. 60 per square meter on marble slabs & tiles.	<i>12/2012-CE dated 17.03.2012 as amended by 12/2013-CE</i>
Chapter 71	ED of 4% on silver produced or manufactured during the process of zinc or lead	<i>12/2012-CE dated 17.03.2012 as amended by 12/2013-CE</i>

Chapter Reference	Particulars	Notification passed on 1st March 2013
	smelting starting from the stage of zinc or lead ore or concentrate.	
Chapter 72	ED from Rs.30,000/- to Rs.40,000/- on Stainless Steel pattis/pattas per cold rolling machine per month	17/2007-CE dated 01.03.2007 as amended by 5/2013-CE
Chapter 85	(i) ED increased from 1% to 6% on cellular phones having retail price of more than Rs.2,000/-; (ii) ED continues to be @ 1% for mobile phones with retail price of less than or equal to Rs.2000	12/2013-CE & 6/2013-CE (rescinding notification 20/2011 dtd.01.03.11)
Chapter 87	ED increased from 27% to 30% on (Sports Utility Vehicles) SUVs of engine capacity greater than 1500 cc, ground clearance of more than 170mm & length in excess of 4000 mm	Clause 92 read with the Sixth Schedule

2.2 ED Exemptions

All changes stated herein will be effective from 1st March 2013

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

Chapter Reference	Particulars	Notification passed on 1st March 2013
Chapter 11	Tapioca Starch manufactured and consumed captively in the manufacture of tapioca sago (<i>sabudana</i>)	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE
Chapter 19	Tapioca sago (<i>sabudana</i>)	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE
Chapter 15	Peanut Butter	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE
Chapter 25	Sulphur recovered as product in refining of crude oil used for the manufacture of fertilizer	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE

Chapter Reference	Particulars	Notification passed on 1st March 2013
Chapter 33	Henna powder or paste not mixed with any ingredient	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE
Chapter 57	All handmade carpets and carpets & other textile floor coverings of coir and jute, whether or not handmade.	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE
Chapter 89	Ships, tugs and pusher craft, dredgers and other sea faring vessels	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE

2.3 ED rate Reduction

All changes stated herein will be effective from 1st March 2013

In the following cases reduction of ED has been prescribed:

Chapter Reference	Particulars	Notification passed on 1st March 2013
Chapter 87	ED reduced from 14% to 13% on chassis of diesel motor vehicles for the transport of goods.	12/2012-CE dated 17.03.2012 as amended by 12/2013-CE
Chapter 61, 62 & 63	All goods of cotton, whether branded or unbranded, not containing any other textile material will now attract 6% ED. Earlier this benefit was restricted to only unbranded goods like ready garments, etc., of cotton and branded goods of cotton attracted the higher excise duty of 10%.	7/2012-CE dated 17.03.2012 as amended by 8/2013-CE (Also refer pt.2.4.1 below)

3. Other Chapter Specific changes

The changes stated herein will come into effect from 1st March 2013.

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

3.1 ED on Readymade garments (Notification 8/2013 & 11/2013 dtd.1st March 2013 - Chapter 61, 62 & 63)

Prior to Budget 2011

The readymade garments industry, whether manufacturing branded or unbranded goods, had the option of either taking the zero ED route or the normal excise duty payment route. In the former, the manufacturer was not allowed to take credit of Cenvat on Inputs and capital goods but at the same time claim full exemption from payment of ED. In the latter, the manufacturer paid duty of excise in the normal course based on relevant valuation rules and was allowed to take credit of Cenvat on inputs and capital goods.

Post Budget 2011

The manufacturer of readymade garments bearing a brand name could no longer take the 'zero ED route' as stated above. Such manufacturers were required to follow the normal ED route.

Post Budget 2013

The position prior to Budget 2011 is now being restored for all readymade garments, whether branded or unbranded.

3.2 ED on Prescribed Motor Vehicles and parts/accessories thereof (Notification 12/2013 dtd.1st March 2013 - Chapter 87)

Specified goods like battery packs/chargers, brake recovery systems, electric compressors, generators, motors, etc. used in the manufacture of Hybrid and Electrically Operated motor vehicles will continue to enjoy a lower ED of 6% till 31.3.15 instead of 31.3.13 as envisaged earlier.

3.3 MRP based assessment on Specified Branded Medicaments (Chapter 30 – Notification No. 1/2013 dtd.1st March 2013)

Position till 28th February 2013

Branded Ayurvedic medicaments and medicaments of Unani, Siddha, Homeopathy or Bio-chemic system were liable to excise duty based on their ex-works value prior to this amendment.

Position w.e.f. 1st March 2013

Branded Ayurvedic medicaments and medicaments of Unani, Siddha, Homeopathy or Bio-chemic system are being brought under MRP based valuation system with an abatement of 35% from MRP.

3.4 Meaning of Copper explained for Chapter heading 7409 (Notification No.12/2013 dtd.1st March 2013)

Copper will cover copper alloys and brass. This in a way means that copper alloys and brass used in the manufacture of utensils and handicrafts will be covered for ED @ Rs.3500 per M.T.

4. Other Legislative Changes

4.1 Central Excise Act, 1944

All changes stated herein will be effective from the enactment of the Finance Bill, 2013 (that is after the Bill becomes an Act on receiving assent from the President).

4.1.1 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.30 lakh** are punishable with imprisonment for a term which may extend to seven years and with fine. It is proposed to **enhance this duty limit amount to Rs.50 lakh.**

4.1.2 Cognizable Offence

The provisions of the Central Excise Act as amended under Section 9A makes the offence cognizable and non-bailable where the liability exceeds Rs. 50 Lakh.

4.1.3 Recovery of money due to Government from third person

Where the Government has reason to believe that any third person is holding money for or on account of first person (being person liable to pay duty), the Government may issue a notice to such the other/third person. On receipt of such notice the said other person will be obliged to present itself before the competent authority, failing which consequences under the Act shall follow.

4.1.4 Modes of delivery of specified documents

The provisions of Section 37C are amended to specify additional modes of delivery of specified documents i.e. by speed post with proof of delivery or through courier approved by the Central Board of Excise & Customs.

5. Impact of Other Non-Tariff Notifications

The changes stated herein will come into effect from 1st March 2013 except for the amendment envisaged in 5.1.2(a) & (b) that will come into effect from the date of enactment of the Finance Bill, 2013.

5.1.1 Recovery of Cenvat Credit wrongly taken (Notification No.3/2013 dtd.1st March 2013)

As such a Central Excise assessee is required to reverse Cenvat Credit availed & utilized in some of the following circumstances:

- a. Where inputs and capital goods are removed as such;
- b. Where capital goods are removed as scrap or waste;
- c. Where value of any inputs or capital goods is fully written off in the books of accounts.

In the event the assessee fails to reverse such credit, the excise authorities will be entitled to recover the same from the assessee along with interest and the provisions relating to recovery of duty arrears will apply as if it was duty payable in the ordinary course.

5.1.2 Advance Ruling provisions expanded

Chapter IIIA of The Central Excise Act, 1944 deals with 'Advance Rulings' by competent authority to prescribed applicants on matters like classification of goods, method of valuation to be adopted, applicability of notifications & admissibility of Cenvat credit.

- a. The statutory provisions of Section 23A are proposed to be amended to allow determination by Advance Ruling authority for activities of manufacture or production in a new line of business by an existing manufacturer.
 - b. Also, apart from above it is now proposed that the Advance Ruling Authority will be allowed to provide determination on allowability of credit of service tax paid or have been deemed to be paid on input services.
 - c. The facility of Advance Rulings was so far available only to entities that had some non-resident interest in the respective business in the form of shareholding, JV partnerships, collaborations, etc. This facility has now proposed to be extended to 'Resident Public Limited Companies'. For the purpose, a public company means a Company that is incorporated or converted as such under the Companies Act, 1956. Such Companies will be deemed to be resident in India when the maximum or total control with regards to the management of the Company lies in India. Such Advance Rulings may help in ironing out some uncertainties surrounding Central Excise duty for such entities.
Notification No. 4/2013-CE dated 1st March, 2013
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6. Conclusion

The FM in his budget speech, like the many earlier speeches since 2007, has shown strong resolve to enact GST(Goods & Services Tax) very soon. In light thereof, the immediate move will be amendments to the Constitution of India in order to enact a law of the stature of GST. The FM wishes to make a resolute effort towards introducing the Constitutional Amendment bill in the monsoon session. He has also set aside a sum of Rs.9000 crores to be paid to the states who have suffered revenue losses on account of reduction of CST (Central Sales Tax) rate. These are certainly moves in the right direction. With the support of majority of the Indian States & with strong political will, one would like to believe that the most anticipated legislative change in the Indian Tax history is not ages away.

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**PART IV - CUSTOMS
EXECUTIVE SUMMARY**

S. No.	Particulars	Page Ref
1	Rate of Customs Duty	2
2	Chapter wise view of the Rate of Customs Duty	
2.1	Duty Reduction or Exemption	2
2.2	Enhancement or Imposition of duty	5
3	Other Chapter Specific Changes	
3.1	Extension of Time Frame	7
3.1.1	Identified Parts of Hybrid & Electric Vehicles	7
3.1.2	Repair of Ocean Going Vehicles by Ship Repair Units	7
4	Legislative Changes	
4.1	Baggage Allowance	7
4.1.1	Rules relating to Jewellery	7
4.1.2	Rules relating to Chocolates, Cheese, Cosmetics, etc.	8
4.2	Amendments to Customs Act, 1962	8
4.2.1	Penal provisions in relation to Evasion of Duty	8
4.2.2	Stay Order by Appellate Tribunal and Other Matters	8
4.2.3	Interest on delayed payment of Duty	9
4.2.4	Duty liability on sample goods in specified circumstances	9
4.2.5	Recovery of money due to Government from third person	9
4.2.6	Clearance of Warehoused Goods for export under postal document	9
4.2.7	Time limit for imported goods stored in a Warehouse pending clearance	9
4.2.8	Mode of filing of Import/Export General Manifest	10
4.2.9	Advance Ruling provisions expanded	10

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 7, 9 to 10, 12 to 14, 16, 18 to 22, 24 & 25, 28 to 49, 51 & 52, 54 to 70, 74 to 83, 86, 90 to 98 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 1st March 2013.

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:

The changes stated herein will come into effect from 1st March 2013 except for items stated at pt.9 of the table hereunder wherein the changes will be effective from the enactment of the Finance Bill, 2013 (that is after the Bill becomes an Act on receiving assent from the President).

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

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
1.	Hazel Nuts	8 – 0802 21 00	BCD – Reduced from 30% to 10%	12/2012 – Customs dated 17.03.12 as amended by	

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
				12-2013-Customs	
2.	De-Hulled Oat Grain	11 – 1104 22 00	BCD – Reduced from 30% to 15%	12/2013-Customs	
3.	Raw Sugar, White or Refined Sugar	17 – 1701	BCD (ED) Fully Exempted	27/2011 – Customs dated 01.03.11 as amended by 15/2013 – Customs	Sr. No. 9A
4.	De-oiled Rice Bran Oil Cake	23 – 2306	BCD (ED) Fully Exempted	27/2011 – Customs dated 01.03.11 as amended by 15/2013 – Customs	
5.	Bauxite	26 – 2606 00 10	BCD reduced from 30% to 10%	15/2013-Customs	Sr. No. 24A & 24B
		26 – 2606 00 20			
6.	Ilmenite	26 – 2614 00 10	BCD reduced from 30% to 10%	15/2013-Customs	Sr. No. 24C & 24D
		26 – 2614 00 20	BCD reduced from 30% to 5%		
7.	Bituminous Coal	27 – 2701 12 00	BCD reduced from 5% to 2% & CVD reduced from 6% to 2%	12/2013-Customs	
8.	Pre-Forms of Precious & Semi-Precious Stones	71 – 7103	BCD reduced from 10% to 2%	12/2013-Customs	Sr. No. 312A
9.	Flat rolled products of iron or non-alloy steel, plated or coated with zinc	72 – 7210 & 7212	BCD (ED) Fully Exempted	Clauses 75 & 77 of the Finance Bill 2013	Retrospective Effect from 1 st March 2011
10.	Specified machinery for use in	84	BCD reduced from 7.5% to 5%	S No 390 (List 29) of 12/2012 – Customs	

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
	leather industry or footwear industry			dated 17.03.2012 as amended by 12/2013	
11.	Textile machinery & parts thereon	84	BCD reduced from 7.5% to 5%	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
12.	Lithium ion automotive battery for manufacture of lithium ion battery packs for supply to the manufacturers of hybrid and electric vehicles	87	BCD Fully Exempted	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
13.	Private Category Aircrafts parts & testing equipment for MRO	88	BCD Fully Exempted	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
14.	Ships & Vessels	89 – 8901, 8904, 8905 & 8906	CVD Fully Exempted	12/2013-CE	19/2012-Customs & 20/2012-Customs both dated 17.03.2012 rescinded
15.	Trophy	Miscellaneous	BCD Fully Exempted	14/2013-Customs	Trophy imported in India in connection with internatio

Sr. No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
					nal tourname nt to be held in India

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.	Steam Coal	27 – 2701 19 20	BCD raise from Nil to 2% & CVD raised from 1% to 2%	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
2.	Raw Silk	50 – 5002	BCD increased from 5% to 15%	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
3.	Stainless Steel Wire Cloth Stripe & Wash Coat	38 – 3824 90 90 & 73 – 7314 14 10	Added in the list of specified goods for manufacture of catalytic convertors and their parts which attract a concessional BCD of 5%.	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
4.	Integrated Decoder Receiver (Set Top Box)	85	BCD enhanced from 5% to 10%	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
5.	Cars & Other	87	BCD enhanced	12/2012-Customs	Note1

Sr.No.	Nature of Goods	Chapter Heading	Amendment	Notification or other reference	Remarks
	Motor Vehicles		from 75% to 100%	dated 17.03.2012 as amended by 12/2013-Customs	
6.	Old Cars	87	BCD increased from 100% to 125%	Clause 76 of the Finance Bill 2013	
7.	New Motorcycles with >800cc	87	BCD increased from 60% to 75%	12/2012-Customs dated 17.03.2012 as amended by 12/2013-Customs	
8.	Airplanes, Helicopters and their parts	88	Exemption Withdrawn for Edu Cess & Higher Edu Cess	69/2004-Customs dtd. 09.07.2004 as amended by 09/2013-Customs	
9.	Yachts & Other Vessels	89 – 8903	BCD increased from 10% to 22%	Clause 76 of the Finance Bill 2013	
10.	Soya Bean Oil, Olive Oil & a few other items	Miscellaneous	Exemption Withdrawn for Edu Cess & Higher Edu Cess	69/2004-Customs dtd. 09.07.2004 as amended by 9/2013-Customs	

Note 1

Condition	Old	New
Diesel Motor vehicle of FOB Value > USD 40,000 & >2500cc	75%	100%
Petrol Motor vehicle FOB Value > USD 40,000 & >3000cc	75%	100%

3. Other Chapter Specific Changes**3.1 Extension of Time Frame**

3.1.1 Identified Parts of Hybrid & Electric Vehicles (Notification 12/2013 dtd.1st March 2013 - Chapter 87)

The validity period of exemption granted to identified parts of hybrid and electric vehicles is being extended by two more years up to 31st March, 2015.

3.1.2 Repair of Ocean Going Vehicles by Ship Repair Units (Notification 12/2013 dtd.1st March 2013 - Chapter 89)

The time limit for consumption of imported goods for the purpose of repair of ocean going vessels by ship repair units is being increased from 3 months to 1 year.

4. Legislative Changes

4.1 Baggage Allowance

All changes stated herein will be effective from 1st March 2013.

4.1.1 Rules relating to Jewellery

Baggage Rules in relation to duty free limit for carry on jewellery is being amended as stated in the table hereunder:

Particulars	Duty Free Limit			
	Male Passengers		Female Passengers	
	Old	New	Old	New
Where an Indian passenger is transferring Residence to India after staying outside India for more than 1 year	10,000	50,000	20,000	100,000
In all other cases	10,000	50,000	20,000	100,000

Rule 6 & 8 of the Baggage Rules stand amended vide notification 25/2013 dtd.1st March 2013.

4.1.2 Rules relating to Chocolates, Cheese, Cosmetics, etc.

The duty free allowance has increased from Rs. 600/- to Rs. 1,500/- in case of duty free items like chocolates, cheese & cosmetics brought by a crew member of vessel/aircraft for their personal use or for use by their family.

Rule 10 of the Baggage Rules stand amended vide notification 25/2013 dtd.1st March 2013.

4.2 Amendments to Customs Act, 1962

All changes stated herein will be effective from the enactment of the Finance Bill, 2013 (that is after the Bill becomes an Act on receiving assent from the President) except for the amendments stated at 4.2.9(c) that will come into effect from the date to be notified.

4.2.1 Penal provisions in relation to Evasion of Duty

Section 104 read with Section 135 of the Act deals with imprisonment for offences under the Act. In accordance with the provisions of Section 104 the following offences are proposed to be treated as non-bailable offences:

- a. Evasion or attempted evasion of duty exceeding Rs.50 lakhs (presently the prescribed duty amount is Rs.30lakhs);
- b. Entry of prohibited goods;
- c. Import or export of any goods which have not been declared in accordance with the provisions of this Act where the market price of such goods exceeds Rs. 1 crore;
- d. Fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds Rs. fifty lakh (presently the prescribed duty amount is Rs.30 lakhs).

4.2.2 Stay Order by Appellate Tribunal and Other Matters

The provisions of Section 35C (2A) of the Central Excise Act, 1944 and the corresponding provisions under section 129B (2A) of the Customs Act, 1962 are being amended to provide for a maximum ceiling of 365 days up to which the Tribunal can grant stay of recoveries. By inserting a proviso in the abovementioned sections, it is being stipulated that after 365 days from the stay order, this stay shall stand vacated even if the disposal of the case is pending for no fault of the assessee.

Section 129C of the Act is also being amended to enhance the monetary limit for a single bench to hear & dispose appeals. This limit is proposed to stand enhanced from Rs.10 lakh to Rs. 50 lakh.

4.2.3 Interest on delayed payment of Duty

Section 37 is being amended in this regard. The interest free period for payment of import duty is proposed to be reduced from 5 days to 2 days.

4.2.4 Duty liability on sample goods in specified circumstances

The provisions of Section 144 are being amended in this regard. It is proposed to reduce the duty liability to 'Nil' on any sample of goods which is consumed or destroyed during the course of testing or examination.

4.2.5 Recovery of money due to Government from third person

The provisions of Section 142 are being amended in this regard. Where the Government has reason to believe that any third person is holding money for or on account of first person (being person liable to pay duty), the Government may issue a notice to such the other/third person. On receipt of such notice the said other person will be obliged to present itself before the competent authority, failing which consequences under the Act shall follow.

4.2.6 Clearance of Warehoused Goods for export under postal document

The provisions of Section 69 are being amended in this regard. As such warehoused goods are cleared for exports only under production of Bill of Export or a Shipping Bill. It is now proposed to allow exports even on production of postal export document.

4.2.7 Time limit for imported goods stored in a Warehouse pending clearance

The provisions of Section 49 are being amended in this regard. Where for some reason the competent authority is of the opinion that the imported goods cannot be cleared within reasonable time, it may allow the storage of such goods in a warehouse. Presently there is no time limit prescribed for such storage. It is proposed to set up a time limit of 30 days for such storage that can be extended by another 30 days and so on for reasons to be recorded by the competent authority. This amendment is expected to expedite the process of assessment & bring in more accountability at the level of the competent authority.

4.2.8 Mode of filing of Import/Export General Manifest

The provisions of Section 30 & 41 are being amended in this regard. It is proposed that the competent authority will mandate the filing of the Import/Export General Manifest (an inventory of the goods on board the vessel) by a Vessel in electronic form to the extent it is practicable so to do. In special cases the authority may permit the filing of such manifest in any other mode.

4.2.9 Advance Ruling provisions expanded

Chapter VB of The Customs Act, 1962 deals with 'Advance Rulings' by competent authority to prescribed applicants on matters like classification of goods, method of valuation to be adopted, applicability of notifications & determination of origin of goods.

- a. It is proposed to permit the Advance Ruling Authority to provide Rulings in relation to matters relating to liability to pay in relation to an activity of import or export.
- b. As per the provisions of Section 28E(a) only a category of persons who were starting new business of import or/and export were eligible for advance ruling. It is now proposed to permit an existing importer or exporter to seek determinations by way of advance rulings while venturing into a new line of business in the field import and/or export of goods. For example say X Ltd. who is dealing in importing of FMCG products now wishes to deal in importing of Iron & Steel products, it can seek determination by way of an advance ruling.
- c. This facility was so far available only to entities that had some non-resident interest in the respective business in the form of shareholding, JV partnerships, collaborations, etc. This facility has now proposed to be extended to 'Resident Public Limited Companies'. For the purpose, a public company means a Company that is incorporated or converted as such under the Companies Act, 1956. Such Companies will be deemed to be resident in India when the maximum or total control with regards to the management of the Company lies in India. Such Advance Rulings may help in ironing out some uncertainties surrounding Customs duty for such entities. Notification in this regard is still awaited.



INSPIRATION PILL

Tony Robbins

“Identify your problems but give your power and energy to solutions.”

Socrates

“The only true wisdom is knowing that you know nothing.”

John Wooden

“Things work out best for those who make the best of how things work out.”

Abraham Lincoln

“Let no feeling of discouragement prey upon you,
and in the end you are sure to succeed.”

BEST REGARDS

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