

PREFACE

General sentiments about country's economic situation have changed in the past few months. The euphoric mood of investors and business community has been replaced with the caution and worries. The Hon'ble Finance Minister had various challenges before him. He had to keep the growth momentum going without hardship to citizens. He had to deal with rising prices of food items with supply side problems to deal with. It was necessary to restrict high fiscal deficit to fund Government spending on social welfare, education, health, poverty alleviation, etc. Necessary steps were required to bring back black money. Creation of jobs for young population of India needed long-term plans and flexible labour laws. Funds for Modernization of Agriculture and infrastructural projects like more roads, power and water and enabling measures for implementation of DTC and GST were expected in the budget. Many of these concerns have been addressed but on several fronts lot more could have been done.

On Direct Tax front, due to impending implementation of DTC from 1st April, 2012, Long Term policy changes were not expected in the budget. As anticipated, inflation linked change in Income Tax exemption limits as a step towards aligning the tax structure with DTC has been made. On infrastructure front, notified infrastructure growth fund bonds giving tax exemption would give much needed push to the infrastructure projects. Credit to farmers through NABARD and Banks, interest subvention and cash subsidy for fertilizers may give some relief to Agriculturist. Sale of Government Assets in the form of disinvestment to the tune of ₹ 40,000/- crores will result into smaller fiscal deficit as in the past sale of spectrum did the same trick for the Government. However, such move may be necessary until underlying structural problems are addressed, as in the short run Government cannot effect drastic adjustments to revenues and expenditure that could be politically unpopular or infeasible.

CA community will be substantially worried more on changes in indirect taxes such as – Service Tax, where payment on accrual accounting will be required against present cash system. However, it is heartening to note that the rate of Service Tax and Excise has remained unchanged.

I sincerely thank Chairman, Taxation Committee of WIRC, CA Sanjeev Lalan and all the contributors for compiling this publication in a very short time.

Wishing all the members Happy Learning and Happy Earning throughout next year.

Shriniwas Y. Joshi
Chairman, WIRC



FOREWORD

In the uncertain environment, arising on account of 2G issue, the seasoned Finance Minister presented a pleasantly plain but a cautious budget to preserve the balance that India has achieved between growth, sustainability, stimulus packages and inflation worries.

The Finance Minister hopes to peg fiscal deficit at 4.6% while budgeting net borrowings at ₹ 3,40,000 crores. This thus has an upside risk for managing fiscal deficit, however we may see some further initiatives to peg fiscal deficit post Assembly elections.

No concrete steps have been spelt out for Financial Sector reforms. However, on it seems that Reserve Bank of India will be announcing final guidelines for entry of new private sector banks shortly. The Finance Minister has also announced liberalisation of portfolio investment route for foreign investors who meet the KYC requirements through SEBI registered Mutual Funds. Limits for investment by FII in the unlisted bonds in infrastructure sector have also been enhanced. Certain legislations are also proposed to be moved for reforms in Financial Sector.

On the direct tax front the Finance Minister has proposed only few amendments in view of the fact that most of the policy initiatives are already contained in DTC which is before Parliament.

On the indirect taxes the Finance Minister has decided not to roll back Excise duty to levels prevailing before November 2008 to see improved business margins translating into higher investment rates and stay on course for GST. He has however increased the lower rate of Central Excise to 5% to match the merit rate of VAT in many states. He has also brought in 130 new items under Central Excise attracting 1% duty.

This booklet, which is an annual publication, we are sure shall help the reader better understand the proposals relating to the direct and indirect taxation. I thank CA. A. R. Krishnan, CA. S. S. Gupta, CA. C. B. Thakar, CA. Atul Suraiya, CA. Reepal Tralshawala, CA. Paras Savla and CA. Hariram Gilda for their valuable and elaborate contribution to this publication. I would like to especially thank CA. Nihar Jambusaria, Past Chairman, WIRC, for giving final touches to the publication.

Sanjeev Lalan

Chairman, Taxation Committee of the WIRC of ICAI



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FINANCE BILL, 2011

DIRECT TAX

Unless otherwise specifically mentioned, the amendments proposed under the direct tax are effective from A. Y. 2012-13 and are, therefore, applicable to income arising on or after 1st April 2011. Specific mention is made at the relevant places, when the effective date of proposed amendment is other than 1st April 2012. Reference to the existing proposal; mean the provisions of the Income-tax Act (Act) immediately prior to the amendments proposed in the Finance Bill, 2011 (Bill).

Any reference to the sections, unless otherwise stated, is to the sections of the Income Tax Act, 1961.

1. RATES OF TAX

In respect of rates of tax, the following changes have been proposed in the Bill.

- The age limit to qualify as a senior citizen is drop to 60 years from 65 years.
- Senior Citizen has been categorised in two groups
 - Aged from 60 years and more but below 80 years
 - Aged 80 years & above (Very Senior Citizen)
- Basic exemption limit raised in case of -
- Every individual (other than resident women & senior citizen), HUFs, AOPs, BOIs and artificial juridical person by ₹ 20,000.
- Senior Citizen
 - Between age of 60-80 years by ₹ 10,000.
 - Age of 80 years or above by ₹ 2,60,000.

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- Basic exemption limit in each kind of assessee is as under:

Sr. No.	Persons	Amount(₹)
1.	Women (other than Senior Citizen / Very Senior Citizen)	₹ 1,90,000
2.	Senior Citizen (Age from 60 but less than 80 years)	₹ 2,50,000
3.	Very Senior Citizen (Age 80 years & above)	₹ 5,00,000
4.	Individuals (not covered above), HUF, BOI, HUF, Artificial juridical person (other than society, local Authority)	₹ 1,80,000

- There is no change in tax rates for Firms, Domestic Companies, Company other than Domestic Companies, Co operative Societies.
- Rate of Minimum Alternate Tax in case of Companies is proposed to be marginally increased from 18% to 18.5%.
- Surcharge in case of Domestic Companies is proposed to be reduced to 5% from 7.5%. In case of Company other than Domestic Companies, surcharge is proposed to be reduced to 2 % from 2.5 %. Reduction in surcharge is applicable from 1-4-2011.
- There is no change in rates of Educational Cess, Secondary & Higher Secondary Cess and its applicability.
- Rate of Dividend Distribution Tax in case of income distributed by the domestic company remains the same, subject to reduction in surcharge. However, rate of Dividend Distribution Tax on income Distributed by mutual funds (other than equity oriented mutual funds) to unit holders is raised in certain cases.
- Concessional rate of tax at the rate of 15% is levied on dividend income received from foreign subsidiary company.
- There is no change in Wealth tax threshold limit & rate of tax.

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The Proposed income-tax rates (including Surcharge, Educational Cess and Secondary and Higher Secondary Cess) for A.Y. 2012-13 have been given in **Table 1** for ready reference. This income tax rates are applicable on income earned during the period of 1st April 2011 to 31st March 2012.

The rates of Dividend Distribution Tax, Securities Transaction Tax & Wealth Tax are given in **Table 2**.

TABLE 1

Particulars	Threshold Limit for Surcharge	Tax Rates	
		Without Surcharge	With surcharge
Individuals, HUF, AOP & BOI	N.A.		
Up to ₹ 1,80,000		NIL	N.A.
₹ 180001 – ₹ 1,90,000*		10.300 %	N.A.
₹ 180001 – ₹ 2,50,000**		10.300 %	N.A.
₹ 180001 – ₹ 5,00,000***		10.300 %	N.A.
₹ 500001 – ₹ 8,00,000		20.600 %	N.A.
₹ 8,00,001 onwards		30.900 %	N.A.
* "Nil" Tax Rate in case assessee is resident Women below age of 60 years. ** "Nil" Tax Rate in case assessee is resident aged 60 years & above but below age of 80 years.***"Nil" Tax Rate in case assessee is resident above the age of 80 years.			
Partnership Firm	N.A.	30.900 %	N.A.
Limited Liability Partnership			
Normal tax	N.A.	30.900%	N.A.
Alternate Minimum Tax	N.A.	19.055%	N.A.
Domestic company	1,00,00,000	30.900 %	32.445 %
Company other than Domestic company	1,00,00,000	41.200 %	42.024 %
Local Authority	N.A.	30.900 %	N.A.
Co-Operative Society	N.A.		
Up to ₹ 10,000		10.300 %	N.A.
₹ 10001 – ₹ 20,000		20.600 %	N.A.
₹ 20,001 onwards		30.900 %	N.A.

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Minimum Alternate Tax			
Domestic company	1,00,00,000	19.055 %	20.0077 %
Company other than Domestic Company	1,00,00,000	19.055 %	19.4361 %
STCG on listed Security			
Individuals, HUF, AOP & BOI	N.A.	15.450 %	N.A.
Partnership Firm	N.A.	15.450 %	N.A.
Domestic Company	1,00,00,000	15.450 %	16.2225 %
Company other than Domestic Company	1,00,00,000	15.450 %	15.759 %
LTCG on listed Security			
Individuals, HUF, AOP, & BOI	N.A.	20.600 %	N.A.
Partnership Firm	N.A.	20.600 %	N.A.
Domestic company	1,00,00,000	20.600 %	21.630 %
Company other than Domestic Company	1,00,00,000	20.600 %	21.012 %

TABLE 2

Particulars	Tax Rates	
Dividend Distribution Tax		
By Domestic Company	16.2225 %	
	Till 30th May' 11	From 1st June' 11
By Money Market Mutual Fund or Liquid fund		
— For income distributed to Individual/HUF	27.038 %	27.0375 %
— For income distributed to others	27.038 %	32.445 %
By other Money Market Mutual Fund or Liquid fund		
— For income distributed to individuals / HUF	13.519 %	13.5187%
— For income distributed to others	21.630 %	32.445 %
<i>Note: Equity Linked Mutual Fund continues to be exempt from DDT</i>		

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Security Transaction Tax		
Delivery based purchased of an Equity Share in Company or Unit of an Equity Oriented Fund	0.125 %	
Delivery based sale of an Equity Share in Company or Unit of an Equity Oriented Fund	0.125 %	
Non-Delivery based sale of an Equity Share in Company or Unit of an Equity Oriented Fund	0.025 %	
Derivatives (Futures & Options)	0.017 %	
Sale of an option in securities where option is exercised	0.125 %	
Repurchased of Units of an Equity Oriented Fund	0.250 %	
Wealth Tax	Threshold limit	Rate of Tax
For every individual, HUF and Company (other than Section 25 Companies)	30,00,000	1%

2. TAXATION OF NON-RESIDENTS

2.1 Tax on dividend received from foreign subsidiary company

New section 115BBC levying concessional rate of tax on dividend received from foreign subsidiary company by Indian company, is proposed to be introduced. Under the proposed provision, dividends received by Indian company from foreign subsidiary shall be charged to tax at the rate of 15 per cent. It also provides that no deduction in respect of any expenditure shall be allowed to Indian holding company. Dividend means dividend as defined u/s 2(22) but excludes dividend u/s 2(22)(e). Foreign subsidiary company means a company where Indian company holds more than 50% in nominal equity capital of such company.

Currently such dividend is charged to tax at marginal rate of 30% & whole of the expenditure incurred to earn such dividend is allowed as deduction. However, lower rate of tax would be mirage in view of disallowance of expenditure incurred by Indian company and also in case where such company is liable to pay MAT.

2.2. Submission of Statement by liaison office

In the absence of permanent establishment in India, liaison office (LO) is not liable to file return of income. (Ref. DDIT vs. Nike Inc

Indian Liaison Office 2009-TII-29-ITAT-BANGINTL and IKEA Trading Hong Kong Ltd 2008-TII-23-ARA-INTL). Further in case of Rolls Royce Plc v. DDIT(19 SOT 42)(Del), liaison office of foreign company was held to be carrying on business activities in India and accordingly such income was liable to be taxed in India.

In order to scrutinise the activities of LO, it is now proposed that every non-resident having a LO set up in India in accordance with the guidelines of the RBI under FEMA, 1999, shall in respect of its activities, file before the Assessing Officer having jurisdiction over him, a statement in the prescribed form containing the prescribed particulars, within a period of 60 days from the end of the financial year. These provisions are applicable from 1st June 2011.

2.3 Transactions with persons located in notified foreign jurisdictional area.

Anti-avoidance measures are proposed to be introduced under the proposed section 94A. The provisions empower the Central Government to notify foreign country or territory having regards to lack of effective exchange of information as a notified jurisdictional area in relation to transactions entered by any assessee. Section also lays various stringent restrictions as under:

- Transactions with parties located in notified jurisdictional area shall be deemed to be an associated enterprise and such transactions shall be deemed to be international transactions and accordingly, transfer pricing regulations would apply to them.
- In respect of payment made to any financial institution located in notified jurisdictional area, no deduction shall be allowed unless the assessee furnishes an authorisation in prescribed form authorising the CBDT or any other tax authority to obtain relevant information.
- In respect of any other expenditure or allowance (including depreciation), arising from the transactions with a person located in notified jurisdictional area, no deduction shall be allowed unless the assessee maintains such documents and also furnishes the prescribed information.

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- In case assessee has received or credited any sum, during any previous year, from the person located in notified jurisdictional area, assessee is required to explain the source of the said sums in the hands of such person, failing which such sums would be deemed to be income of the assessee of that previous year.
- Any payment chargeable under the Act, made to the persons situated in notified jurisdictional area shall be subject to withholding of tax at the rate of 30% or such higher rate as may be prevalent.
- These provisions are applicable from 1st June 2011.

2.4 Infrastructure Debt Fund

The Finance Bill 2011 proposes to insert certain new provisions / amend existing provisions relating to taxability of the infrastructure debt fund.

- Clause – 4 (c) of the Finance Bill seeks to insert new clause (47) in section 10 of the Income tax Act so as to provide that any income of an infrastructure debt fund, which is set up in accordance with the guidelines as may be prescribed and which is notified by the Central Government in the Official Gazette shall not be included in the total income. Consequential amendments have been made in following sections-
 - Sub-section (1) of section 115A of the Income tax Act lays down special rates of taxes in the case of non residents (other than companies) or foreign companies in respect of incomes by way of dividends, interest, royalties, etc. Clause – 15 of the Finance Bill seeks to amend section 115A to provide that any interest received by a non-resident (not being a company) and a foreign company from infrastructure debt fund as notified and referred to in proposed section 10(47) shall be taxable @ 5% on the gross amount of such interest income.
 - Clause – 27 of the Finance Bill seeks to insert a new section 194LB to provide that tax shall be deducted by such notified infrastructure fund on any interest paid to such non-resident @ 5%

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- Clause – 23(c) of the Finance Bill seeks to make a consequential amendment in section 139(4C) so as to provide that such infrastructure debt fund shall be required to file a Return of Income if the total income of such entity without giving effect to the exemption proposed in the above clause exceeds the maximum amount which is not chargeable to tax. Thus, in order to claim exemption under proposed section 10(47), such fund is required to file return of income.

The above amendments are proposed to take effect from 1st June 2011

- As per the memorandum explaining the provisions, it is stated that in order to augment long-term, low cost funds from abroad for the infrastructure sector, the infrastructure debt fund is proposed to be set up. Thus, the dedicated debt funds would be issued to non-residents which would help in bringing foreign currency to the country and at the same time strengthen the infrastructure of the country.

2.5 Collection of information on requests received from tax authorities outside India –

Sections 131 & 133

- As per section 131(1) of the Income Tax Act, certain income tax authorities have been conferred with the same power, as available to a Civil Court while trying a suit in respect of discovery and inspection, enforcing of attendance of any person, including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions.
- As per existing provisions of section 133 of the Income Tax Act, the income tax authorities referred to in section 133 are empowered to call for information which is useful for or relevant to, any proceeding under the Act.
- Clause 21 of the Finance Bill 2011 seeks to amend section 131 of the Income Tax Act relating to power regarding discovery, production of evidence, etc.

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- A new sub section (2) is proposed to be inserted whereby it shall be competent for any income tax authority not below the rank of Assistant Commissioner of Income Tax, as notified by the Board in this behalf, to exercise the powers conferred by sec. 131(1) for the purpose of making an inquiry or investigation in respect of any person or class of person in relation to an agreement referred to in section 90 or 90A, notwithstanding that no proceedings with respect to such persons or class of persons are pending before it or any other income tax authority . Further sub- section (3) to section 131 is proposed to be amended so as to empower the aforesaid authority, as notified by Board, to empower and retain any books of accounts and other documents produced before it in any proceeding under the Act.
- A new proviso is inserted after the second proviso to section 133 which provides that an income tax authority notified under section 131(2) may exercise all powers conferred u/s 133 for the purposes of an agreement referred to in section 90 or section 90A, notwithstanding that no proceedings are pending before it or any other income tax authority.
- The above amendments would take effect from 1-6-2011
- The amendment are brought to facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of any information u/s 90 or 90A of the Act. The proposed amendments give further powers to the specified income tax authorities to call for information in respect of international transactions wherever such information is requested by foreign tax authorities in relation to an agreement for exchange of information u/s.90 or 90A of the Income tax Act.

3. BUSINESS DEDUCTIONS

3.1 Enhancement of weighted Deduction for contribution made to approved Scientific research programme – Section 35(2AA)

- The Finance Act 2010 w.e.f A.Y. 2011-12, increased weighted deduction from 125 % to 175 % of any sum paid by the assessee to a National Laboratory or a University or a Indian

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Institute of Technology or to a Specified person for an approved scientific research programme.

- Clause 5 of the Finance Bill 2011 seeks to further increase such weighted deduction from 175% to 200% w.e.f. A.Y. 2012-13 in respect of approved scientific research programme.
- As per the memorandum explaining the provisions, the enhancement of weighted deduction is to encourage more contribution towards such approved scientific research programme.

4. TRUSTS

- Section 2(15) of the Act defines “charitable purpose” which includes, among others, the advancement of any other object of general public utility. However, the advancement of any other object of general public utility will not be a charitable purpose if it is in the nature of trade, commerce or business, or rendering of any service in relation to a trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.
- This restriction created genuine hardship to those organisation receiving sundry receipts categorised as income from such activities, which in turn deprived them from exemption u/s. 11 or u/s. 12. Hence, in order to overcome this hardship, Finance Act 2010 has prescribed that advancement of any other object of general public utility shall be treated as “charitable purpose” if the aggregate value of receipts from such activities does not exceed ₹ 10 lakhs in the previous year. This limit of Rs 10 lakhs is proposed to be extend to Rs 25 lakhs.

5. LIMITED LIABILITY PARTNERSHIP

5.1 Alternate Minimum Tax (AMT) on Limited Liability Partnership (LLP)

- The concept of LLP in India has come in effect from 2009 by way of Limited Liability Partnership Act, 2008. Under the Income tax Act, the provisions in relation to LLP takes into consideration features of both a body corporate and

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a partnership firm and in relation to the tax liability and assessment of LLP, the same is more or less in line with assessment of a partnership firm.

- The Finance Bill seeks to insert a new Chapter XII-BA consisting of new sections 115JC, 115JD, 115JE & 115JF in the Act, containing special provisions relating to certain limited liability partnerships.
- Section 115JC (1) provides for levy of Alternate Minimum Tax (AMT) payable @ 18.5% on adjusted total income of LLP, where the regular income tax payable is less than the AMT.
- For the aforesaid purpose, sub-section (2) to sec. 115JC provides that the adjusted total income shall be the total income before giving effect to the newly inserted Chapter XII – BA as increased by the deductions claimed under any section included in Chapter VI-A under the heading ‘C-Deductions in respect of certain incomes’ and deduction claimed under section 10AA.
- Sub-section (3) to Sec.115JC provides that a report is required to be obtained from the Accountant certifying that the adjusted total income and AMT have been in accordance with provisions of this Chapter and such report is required to be furnished on or before the due date of filing return of income u/s.139(1).
- Proposed new section 115JD provides that credit for AMT paid over and above the regular tax payable by the LLP would be allowed to be carried forward and set off up to 10th Assessment year immediately succeeding the assessment year in which the tax credit becomes allowable. The said credit would be allowed to be set off for an assessment year in which the regular income tax exceeds MAT payable, to the extent of the excess of the regular income tax over the AMT and the balance tax credit available shall be carried forward. It is also provided that if the amount of regular income-tax or AMT is reduced or increased due to any order passed under the Income tax Act, the amount of tax credit allowed shall vary accordingly.

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- The proposed new section 115JE seeks to provide that save as provided in the new Chapter XII-BA all the other provisions of the Income tax Act, shall apply to a LLP.
- The proposed new section 115JF seeks to define the expressions 'accountant', 'alternate minimum tax', 'limited liability partnership' and 'regular income tax' for the purposes of newly inserted Chapter XII-BA

These amendments will take effect from 1st April, 2012.

- In the memorandum explaining the provisions, the reason for introducing new Chapter XII-BA is for preserving the tax base vis-à-vis profit linked deductions, and to do away with the tax advantages that LLP gets over a company in terms of MAT. After the aforesaid amendment, there will be no major difference in terms of taxation in respect of a LLP vis-à-vis a company. Hence, one of the benefits or incentives for conversion into LLP is taken away thereby treating again LLP and a company almost at par as far as taxation is concerned.
- A comparative chart is provided hereunder, which shows the implication under MAT provisions and proposed AMT provision between a company and a LLP in terms of MAT / AMT liability-

Section 115JB	Section 115JC
1. Applies to Company	Applies to LLP
2. MAT is calculated on adjusted Book profits	AMT is calculated on adjusted total income
3. Book profit to be adjusted as per Explanation 1	Total income to be increased by (a) deduction under chapter VI-A
	(b) deduction u/s 10AA
4. Book Depreciation or Book loss whichever is less shall be reduced from the book profits.	Depreciation and loss as per normal income tax provisions allowed.

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Section 115JB	Section 115JC
5. Deduction for capital expenses is not to be reduced from book profits even if different sections like 35A, 35AB, 35AC, 35AD, provide for the same.	Deduction for capital expenses u/s 35A,35AB,35AC,35AD etc. allowed to be reduced from total income.
6. LTCG u/s 10(38) is not allowed to be deducted from Book Profit & therefore liable to MAT	LTCG u/s 10(38) is not part of total income & not required to be added back and therefore not liable to AMT.
7. Book Depreciation is allowed as deduction while computing MAT	Depreciation u/s 32 is allowed as deduction while computing AMT.
8. Deduction u/s 80HHC, 80HHE, 80HHF is allowed.	Deduction u/s 80HHC, 80HHE, 80HHF not allowed.

6. TRANSFER PRICING

6.1 Determination of forbearance limit

S. 92C lays down computation of arms length price (ALP) applying appropriate methods in respect of transactions between associated enterprises. It also provided that in case, difference between ALP and actual price of the transaction is within 5%, no adjustment would be carried to actual price of the transaction. Currently forbearance limit of 5% applies across all types of transactions & industries.

It is now proposed to empower the Central Government to notify variance rate for each type of transactions which would be within the forbearance level.

6.2 Enhancement in powers of Transfer Pricing Officer

Currently u/s 92CA, Transfer Pricing officer (TPO) determines ALP of the international transactions, which is referred to him by the Assessing Officer (AO). In the case of Amadeus India Pvt. Ltd., 2011-TII-22-ITATDel-TP, it was held that TPO cannot determine ALP in

respect of transactions which are not referred to him by the AO. It is now proposed to provide that TPO can determine ALP in respect of such international transactions which come to his notice during the course of the proceedings before him.

In order to determine ALP, TPO can exercise powers of summoning, calling for books of account, documents, etc. for the purposes of inquiry or investigation u/s 131(1) or 133(6). It is now proposed to further empower TPO with the powers of survey u/s 133A so as to conduct on-the-spot enquiry and verification. These provisions are applicable from 1st June 2011.

6.3 Submission of transfer pricing audit report by corporate

Every person who has entered into international transactions is required to obtain and file audit report in from 3CE, from accountant, on or before 30th September of the relevant assessment year. In order to reduce hardship caused to corporate assessee (liable for transfer pricing audit), it is proposed to extend due date of filing return of income & obtaining transfer pricing audit report to 30th November of the assessment year. No such extension is available to any person other than corporate assessee even though they are liable for Transfer pricing audit. These provisions are applicable from 1st June 2011.

7. SETTLEMENT COMMISSION

7.1 Expansion of criteria for filing application for settlement in search and seizure cases – Section 245C

- Under the existing provisions of section 245C of the Income tax Act, an assessee can make an application before the settlement commission containing full and true disclosure of his income which have not been disclosed before the Assessing Officer and the manner of earning such income. The application can be filed by the assessee in cases where-
 - i) search and seizure action has been initiated in cases of persons referred to in section 153A or section 153C, the additional tax payable on the income disclosed in the application exceeds ₹ 50 lacs,

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- ii) in any other case, the additional amount of income tax payable on the income disclosed in the application exceeds ₹ 10 lacs.
- A new clause (ia) is proposed to be inserted to section 245C(1) whereby an application can also be filed by an assessee where such assessee-
 - (a) is related to the person referred in clause (i) in whose case proceedings have been initiated as a result of search and such person has filed an application before the settlement commission; and
 - (b) is a person in whose case also proceedings have been initiated as a result of search,the additional amount of income tax payable on the income disclosed in his application exceeds ₹ 10 lacs.
- The related person is defined in Explanation inserted after the proviso to section 245C(1) and the same covers the following -
 - i) where the specified person is an individual, any relative of such individual;
 - ii) where specified person is a company, firm, AOP or HUF, any director of the company, partner of the firm, or member of AOP or family, or any relative of such director, partner or member;
 - iii) any individual having substantial interest (i.e. in case of company, beneficial owner of shares carrying not less than 20% of the voting power; in any other case, beneficially entitled to not less than 20% of profits of such business or profession) in the business or profession of specified person or any relative of such individual;
 - iv) a company, firm, AOP or HUF having substantial interest (same as above) in business or profession of specified person or any director, partner, member of such company, firm, association or family, or any relative of such director, partner, or member;

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- v) a company, firm, AOP or HUF of which a director, partner or member has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;
- vi) any person who carries on a business or profession-
 - A) where the specified person is an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or
 - B) where the specified person being a company, firm, AOP or HUF, or any director of such company, partner of such firm, or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

The aforesaid proposed amendment would take effect from 1-6-2011.

- Any assessee subjected to search and seizure provisions under section 153A of the Income-tax Act is allowed to file application before settlement commission on payment of additional income tax of ₹ 50 lacs on the income disclosed before the settlement. Any other person related to such assessee and who is also subjected to search and seizure proceedings u/s.153A or 153C is also allowed to file application before the settlement commission on payment of additional income tax of ₹ 10 lacs as per the proposed amendment. Thus, earlier all the assesses subjected to search and seizure proceedings were liable to pay additional amount of income tax of ₹ 50 lacs in respect of income disclosed before the settlement commission. However, now only one person (specified person) can file application by payment of ₹ 50 lacs additional income tax and all other assessee related to such assessee can file application by payment of additional income tax of ₹ 10 lacs only. Thus, by reducing the additional

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amount of income tax, the entire group or other related person can now file application to the settlement commission, which otherwise would not have been possible due to huge additional tax liability for the reason that such other concerns or related entities may not be found having substantial undisclosed income.

7.2 Power of Settlement Commission to rectify order – Section 245D:

- Under the existing provisions of Chapter XIX-A relating to Settlement of cases, there is no specific or express power given to the Settlement Commission to rectify its order. The Supreme Court in *Brij Lal & Ors. v. CIT* (2010) 328 ITR 477 (SC), has held that in the absence of specific provision, the Settlement Commission could not have reopen its concluded proceedings by invoking s.154 so as to levy interest u/s.234B, when it was not levied in the original proceeding.
- It is proposed to insert sub-section 6B to section 245D of the Income tax Act so as to specifically provide that the Settlement Commission may at any time within a period of six months from the date of its order rectify any mistake apparent from the record and thereby amend any order passed by it u/s.245D(4) of the Act. It is further provided in the proposed amendment to grant opportunity of being heard to the application and the commissioner where the rectification has the effect of modifying the liability of the applicant.
- Consequential amendments are also proposed to be made in section 22D of the Wealth Tax Act.
- According to the memorandum explaining the provisions, the existing provision of section 245D(4) provides that Settlement Commission may pass an order as it thinks fit in respect of the matters covered by the application after giving opportunity of being heard. Further, under provisions of section 245F(1), the Settlement Commission is conferred with all the powers vested in an income tax authority (which would cover power for rectifying mistakes apparent from the record as per section 154). Thus, in order to overcome the decision of the Supreme Court in *Brij Lal* case, supra, specific power is now proposed to be inserted.

- The aforesaid proposed amendment would take effect from 1-6-2011.

8. OTHER MAJOR AMENDMENT

8.1 Extension of Time Limit for completion of assessments and reassessments under section 153 and section 153B in case of exchange of information:

- Section 153 of the Act provides for the time limits for completion of assessments and reassessments. Explanation – 1 to the section provides for exclusion of certain periods specified therein while computing the period of limitation for completion of assessments and reassessments.
- Section 153B of the Act provides for the time limits for completion of assessments in case of search or requisition. The Explanation to the section provides for exclusion of certain periods specified therein while computing the period of limitation for completion of assessments and reassessments.
- Clause – 25 of the Finance Bill 2011 seeks to insert clause (viii) in the Explanation – 1 of section 153. The said clause (viii) seeks to provide that the period commencing from the date on which a reference for exchange of information is made by a competent authority under an agreement referred to in section 90 or 90A and ending with the date on which the information so requested is received by the Commissioner, or a period of six months, whichever is less, shall be excluded for the purpose of computing the period of limitation for completion of assessment and reassessments.
- Clause – 26 of the Finance Bill 2011 seeks to amend Explanation to section 153B of the Act on similar lines as above in respect of assessments/reassessment in case of search or requisition.

The amendments are proposed to take effect from 1st June 2011.

INDIRECT TAXES

I. CUSTOMS DUTY

- A. No change in Peak Rate. It remains @ 10%. New rate of 2.5% is introduced for the goods hitherto attracting duty @ 2% and 3%.
- B. Changes in duty rates of major items as applicable w.e.f 1st March 2011 are as follows:

Sr No	Description of goods	Earlier	Present
	Gypsum	5%	2.5%
	Ores and concentrates	2%	2.5%
	Micro-irrigation equipment (84248100)	7.5%	2.5%
	Petroleum coke	5%	2.5%
	Sodium Polyacrylate	7.5%	5%
	Polytetramethylene ether glycol	7.5%	5%
	Waste paper	5%	2.5%
	Printed books, Dictionaries & encyclopedias,	nil	Nil
	Scrap of stainless steel for melting	5%	Nil
	Ferro Nickel	5%	2.5%
	Tunnel boring machine & parts thereof for highway development projects	—	Nil

- C. Exemption from CVD on packaged/canned software: to packaged software which do not require declaration of MRP under section 4A of Central Excise Act to the extent of the consideration for the transfer of right to use the said software
- D. Major products wherein 4% SAD exemption granted are
- 1) P & P Medicine (chapter 30) (not. 23/2011)
 - 2) Copper Dross, copper residues, copper oxide mill scale, brass dross and zinc ash (no5. 20/2011)
 - 3) Gold dore bars having gold content not exceeding 80% imported for refining and manufacture of serially numbered gold bars
 - 4) Inkjet & laser jet printers imported by actual user for manufacture of printer
- E. Export duty is imposed on iron ores, Luggage Leather, Industrial leathers, Hydraulic/packing/belting/washer leather Industrial harness leathers, Scrap of iron & steel.

CUSTOMS

- F. Cash security of ₹ 50 lakh is done away and only bank guarantee of 2% of the CIF value of project is required to be submitted now. Further, the bank guarantee need not to be renewed after six months from the date of submission of documents for finalization of assessment for project imports.
- G. Section 17 is being amended to provide self assessment of bill of entry/shipping bill/bill of export. The importer will himself assess the goods and pay the appropriate duty and the Customs officer may re-assess the goods and re-verify the amount of duty computed by the importer. In case the importer is not a position to self assess the goods, he may opt for provisional assessment.
- H. Section 27 is being amended on the lines of Central Excise to provide the period of one year from the relevant date for claim of refund.
- I. Section 28 is being amended on the lines of Central Excise to provide the period of one year from the relevant date for issue of demand notice. The salient features of the amendment are:
 - i. The period to issue SCN and demand customs duty has been increased to one year in cases where there is no collusion, willful misstatement or suppression of facts. In cases where there is collusion, willful misstatement or suppression of facts, the period of demand is five years from the relevant date.
 - ii. Closure of proceedings in case where duty is paid with interest before issue of SCN in cases where there is no collusion, willful misstatement or suppression of facts.
 - iii. In case short payment arises on account of collusion, willful misstatement or suppression of facts, then the assessee has given an option to pay the duty with interest and penalty equal to 25% of duty amount within 30 days of receipt of notice to conclude the proceedings as stated in the said SCN.
- J. Interest has to be paid from the first day of the month succeeding the month in duty ought to have been paid or erroneously refunded. The interest rate has been increased to 18% from 13%/15%.
- K. Section 110A is being amended to provide power to adjudicating authority to release seized goods instead of Commissioner of Customs.
- L. SEZ: - Notification 45/2005 Cus dt 16-5-2005 exempts payment of 4% SAD on condition that VAT or CST is payable on clearance of goods manufactured/produced in SEZ to DTA.



II. CENTRAL EXCISE

A. Important Rate changes and Exemptions:

- i. Duty imposed on Ready made Garments and other articles covered under chapter 61, 62 and 63 which bear a brand name or are sold under a brand name. The levy is not applicable to retail tailoring establishments that stitch garments in a customized manner to the size and style specifications of individual customers, whether out of fabric purchased by the customer from the same establishment or fabric supplied by the customer.
- ii. Levy of duty on approx 130 products items w.e.f 1st March 2011. Option of payment of 1% concessional rate of duty without facility of cenvat credit or payment of duty @ 5% with cenvat credit facility has been extended.
- iii. **Rate of duty is increased from 4% to 5% on items such as** prepared foodstuff like sugar confectionary, pastry and cakes; starches; paper and articles of paper; textile intermediates & textile goods; drugs, medical equipments, etc.
- iv. Exemption has been granted to Packaged / Canned Software wherein it is not required to declare MRP as per the provisions of Legal Metrology Act, 2009 on the value which represents the consideration paid or payable for the transfer of right to use the goods under.

B. Specified process of mere labeling or re-labeling or repacking from bulk to retail packs or adoption of any other treatment to render marketability to be considered as manufacture in case of specified products of chapter 15, 22. certain other processes have been deemed to manufacture for products under chapter 26, 71 and chapter 72.

C. The rate of interest on delayed payment of duty is increased from 13% p.a. to 18% p.a.

D. New section 11A governing recovery of short-paid or unpaid duty is proposed to be inserted in place of the existing provisions. The salient features of the said section are

CENTRAL EXCISE

- i. Closure of proceedings in case of duty paid with interest before issue of SCN in cases where there is no fraud, suppressions, willful misstatement, collusion, etc.
 - ii. A new provision to limit penalty to 50% of duty in cases where the extended period of limitation is invoked but the transactions to which such duty relates are entered in the specified records.
 - iii. In case short payment arises on account of fraud, suppressions, willful misstatement, collusion, etc and is detected in audit, investigations and verification the assessee has been given an option to pay the duty with interest and penalty equal to 1% of the duty amount per month subject to maximum of 25% of duty amount. On payment of such amount and communication of the same to the Central Excise Officer, there will be no issue of Show cause notice.
 - iv. U/s 11AC penalty is reduced to 25% of duty and interest within 30 days from the date of receipt of orders.
- E. Section 11DDA is introduced to provide a first charge on the assets of the defaulter after the dues against the specified acts such as Companies Act, Securitisation Act, etc have been meet with.
- F. Power has been granted to the Joint and Additional Commissioners of Central Excise for the search and seizure of the documents or books or things and to carry out such proceedings under the act.
- G. New section 35R to bring the policy of filling of appeals by the Department in line with the National Litigation Policy. The same is being given retrospective effect from 20-10-2010.

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III. CENVAT CREDIT RULES, 2004.

- A. The definition of the capital goods has been amended to extend the credit of the duty paid on goods which are used outside the factory for generation of electricity for captive use within the factory.
- B. Exempted Goods will now cover those goods in respect of which the benefit of an concessional rate of duty @ 1% has been availed and exempted services will include services on which abatement has been taken & notification providing abatement is subject to condition that no credit of duty on inputs or capital goods or service tax paid on input services. The term exempted services will now also include trading activity.
- C. **Inputs:**
- i. Inclusion in the definition of Inputs: The definition of inputs to include all those goods which is used by the manufacturer of the final product in the factory or used for providing taxable services are to be treated as inputs. Additionally the goods used for generation of electricity or steam being used for captive consumption are specifically treated as inputs. Inputs also include goods cleared as accessories or goods cleared under free warranty.
 - ii. Exclusions: The goods namely Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, all goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods have been excluded. This exclusion shall not apply in case of some of the specified services as provided in the said clause. Inputs also do not include capital goods, motor vehicle, goods used primarily for personal use or for consumption of any employee including food articles etc and Goods having no relationship with the manufacture of final product.
- D) **Input services:** The definition of “Input Services” contained in Rule 2(l) has been revised. The input services in respect of the “activities relating to business” are now excluded. The services in relation to construction of building or civil structure or part thereof or Laying of foundation or making of structures for support of capital goods are also excluded. Specified services of General insurance,

CENVAT CREDIT RULES, 2004.

Rent-a-cab, Authorised Service Station, Supply of Tangible Goods service in respect of Motor Vehicle and specified services such as outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance etc have been excluded from input services.

- E. Specific amendments have been made in Cenvat Credit Rules to disallows cenvat credit of 1% Concessional Rate of Duty paid on inputs and to provihibit utilization of cenvat credit to a manufacturer availing such concessional rate of duty.
- F. Reversal of Cenvat Credit is now required on partial write-off or provision of write-off in the books of account for inputs.
- G. Amendment in Rule 6:**
 - 1. The rate of reversal on exempted services has been reduced to 5% from the current rate of 6% of value of exempted services in case such option has been availed by the assessee.
 - 2. The amended Rule 6(3) provides an additional option to determine the amount attributable to the inputs services used in relation to manufacturer of exempted goods or provision of exempted services. Consequently to the said amendment the manufacturer or provider of output services has following option:
 - i) Payment of an amount equal to 5% of value of exempted goods or exempted services.
 - ii) Payment of amount determined under sub-rule 3(A) i.e. reversal of cenvat credit based on the proportionate of dutiable as well as exempted turnover.
 - iii) A New option wherein separate accounts can be maintained for the avaiement of cenvat credit on inputs and the quantum of cenvat credit taken on input services can be determined on the basis of manner given in Rule (3A) i.e. on proportionate basis. A new option under Rule 6(3) has been prescribed to determine the quantum of cenvat credit attributable to the exempted goods and exempted services. In case of services wherein abatement has been availed on amount of 5% is required to be paid on the value of which exemption has been claimed.

CENVAT CREDIT RULES, 2004.

3. The Concept of 16 specified services wherein full credit eligible if such services are used for dutiable as well as exempted goods or services has been dispensed with and now the credit of the same needs to be availed along with the other credit.
4. Service provider who are a banking company and a financial institution including a non-banking financial company are required to reverse an amount of 50% of value availed on input and input service and are not required to follow any other provision for reversal of cenvat credit. Similar provision has been incorporated with respect to service provided under the category of "Life Insurance and Management of ULIP service" wherein these services provided are required to reverse an amount of 20% of Cenvat Credit availed by them.
5. The value of service in respect to trading services is the difference between the sale price and the purchase price of the goods traded.
 1. Rule 6(6A) is being inserted to provide that no reversal of cenvat credit is required in cases where services are provided to SEZ unit or developer without payment of service tax for the authorized operation in such unit or developer.

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IV. SERVICE TAX

1. PREAMBLE

- 1.1 The Finance Bill, 2011 (“Bill”) has proposed to make certain changes in Chapter V of the Finance Act, 1994 (“Act”), the law governing service tax, some of which are effective on the **enactment of the Bill**, some thereafter from a date to be notified and some with retrospective effect. A significant change is the reintroduction of **prosecution provisions** which were deleted in 16.10.1998. In addition to the above, the Central Government has also issued notifications making some changes in Service Tax Rules, 1994, Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007, the Export of Service Rules, 2005, Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, Service Tax (Determination of Value) Rules, 2006, CENVAT Credit Rules, 2004, existing exemption notifications and also providing for certain new exemptions. A landmark is the formulation of the **Point of Taxation Rules, 2011** which will take effect from 1.4.2011. Some of the notifications are effective from 1.3.2011 and some from 1.4.2011. However, ***the effective rate of service tax has been maintained at 10.30% (i.e., 10% service tax + 2% education cess + 1% secondary and higher education cess).***
- 1.2 In fact this year the Budget has brought about substantial changes in service tax.

2. CHANGES EFFECTIVE FROM 1.3.2011

2.1 Works Contract Composition Scheme – Restriction on availment of Cenvat credit on input services

- 2.1.1 Under the existing provisions, a service provider engaged in execution of a works contract has an option to avail the composition scheme prescribed under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 [“Works Contract Composition Rules”] and pay service tax @ 4% of the gross amount charged for the works contract. However, in this option no CENVAT credit of duty paid on “input goods” can be claimed. But CENVAT credit of tax/duty paid on “input service” and “capital goods” would be allowed.



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2.1.2 *Vide* Notification No. 1/2011 – ST dated 1.3.2011, a new sub-rule (2A) has been inserted in Rule 3 of the Works Contract Composition Rules, whereby a service provider availing the works contract composition scheme shall be eligible to claim CENVAT credit only to the extent of 40% of the service tax paid on the following input services which are used in provision of the works contract services viz.,—

- (i) erection, commissioning and installation services [s. 65(105) (zzd)];
- (ii) commercial or industrial construction services [s. 65(105)(zzq)]; and
- (iii) construction of residential complex services [s. 65(105) (zzzh)].

2.1.3 However, the above restriction would be applicable only in those cases where the input service provider has paid service tax on the full value of the services [i.e., the erection, commissioning and installation services; or commercial or industrial construction services; or construction of residential complex services as the case may be] after availing CENVAT credit on his inputs. Thus the above restriction of 40% would not apply in the following cases.

- (a) Where the input service provider has charged service tax after availing the abatement under notification No. 1/2006 – ST, dated 1.3.2006, since he would have charged service tax on the partial value and not on full value of taxable service.
- (b) Where he has charged service tax on full value but has not claimed CENVAT credit on his inputs.

2.1.4 For the works contractor availing composition scheme and claiming input credit would be a huge compliance exercise. He will have to check-up with each input service provider, who has charged full rate of service tax, as to whether he has claimed CENVAT credit on inputs and, if not, take an appropriate declaration from him so that the 40% restriction would not apply. The 40% restriction would not apply where the input service provider has paid full tax and claimed credit only on input services and capital goods. *Indeed the works contractor will have to do a lot of work to comply with service tax!*

- 2.1.5 Circular No. D.O. F. No.334/3/2011-TRU dated 28.2.2011 explaining the amendments to service tax by the Bill [hereinafter referred to as "TRU Circular"] has explained the purpose of the above amendment as *"to ensure that the credit on inputs is not availed of indirectly while availing of the composition scheme"*.
- 2.1.6 Lastly, it may be noted that where the input service provider has paid full tax on his services after availing CENVAT credit on his inputs the works contract service provider may not opt for the composition scheme but may pay service tax on gross value of contract after reducing the value of goods under Rule 2A of Service Tax (Determination of Value) Rules, 2006 ("Valuation Rules") and then claim CENVAT credit of the services provided by the said input service provider.

2.2 Valuation of Telecommunication services – at retail price

- 2.2.1 W.e.f. 1.4.2011, an amendment has been made in Service tax (Determination of Value) Rules, 2006, vide Notification No. 2/2011-ST dated 1.3.2011, by inserting an explanation to sub-rule (1) of Rule 5 whereby it has been clarified that with regard to the telecommunication services the value of taxable services shall be the gross amount paid by the subscriber to whom the telecommunication services have been provided by the telegraph authority. Thus, assessee engaged in providing telecommunication services, i.e. the telegraph authority would have to pay service tax on the retail price of the recharge coupons or prepaid cards and not on the actual money received by them from the distributor or intermediary. *Prima facie* it appears that telecommunication service providers would be forced to pay service tax even on the amounts not received by them.
- 2.2.2 The TRU Circular has explained the purpose of the above amendment as follows:

"9.2 An explanation has been added after rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 clarifying that for the purpose of telecommunication service [Section 65(105) (zzzx)] the value shall be the gross amount paid by the person to whom the service is provided by the telegraph authority. Thus in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross

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amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority. This amendment shall come into force on 01.03.2011.”

2.3 New Exemptions

Business exhibition services for exhibition outside India exempt

- 2.3.1 Services provided by an organiser of business exhibition for holding such exhibitions outside India have been exempted. [Notification no. 5/2011-ST dated 1.3.2011].

Certain specified Works Contract services exempted

- 2.3.2 Works Contract services, in the nature of —

- (a) construction of a new residential complex or part thereof; or
- (b) completion or finishing services provided in respect thereof,

carried out under the “Jawaharlal Nehru Urban Renewal Mission” and “Rajiv Awaas Yojana” have been exempted. [Notification No. 6/2011-ST dated 1.3.2011].

Certain specified General Insurance services exempted

- 2.3.3 General insurance services provided to any person under the “Rashtriya Swasthya Bima Yojana” have been exempted [Notification No. 7/2011-ST dated 1.3.2011].

Works Contract services provided within the port/airport exempt

- 2.3.4 The Finance Act, 2010, had amended the relevant definitions in the context of ‘port services (major and minor)’ and ‘airport services’ w.e.f. 1.7.2010 so as to cover ‘all services’ wholly rendered within the port/air port premises under ‘port services’/‘airport services’ irrespective of the principles of classification.

- 2.3.5 The government has now exempted works contract services provided —

- (a) wholly within an airport and classifiable under the category of ‘airport services’ [Notification No. 10/2011-ST dated 1.3.2011]; and

- (b) wholly within a port (major and minor) for the purpose of construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways [Notification No. 11/2011-ST dated 1.3.2011].

25% Abatement for services provided in relation to transport of (i) coastal goods; and (ii) goods through inland water including National Waterways

- 2.3.6 Abatement of 25% of the gross value of the services is provided in respect of services of transportation of coastal goods or goods through national waterways or inland waterways. Accordingly, service tax would now be payable only on 75% of the value. However, in this case the service provider would not be allowed to avail any CENVAT credit [Notification No. 16/2011-ST dated 1.3.2011].

2.4 Exemption in respect of taxable services provided to a SEZ developer /unit – Expression “wholly consumed” defined to bring in certainty

- 2.4.1 Presently, under the service tax law, Notification No. 9/2009-ST dated 3.3.2009 as amended by Notification No. 15/2009-ST dated 20.5.2009 provides that the specified taxable services provided to the developer / unit of SEZ in relation to authorized operations is exempt from service tax whether or not the said taxable services are provided inside the SEZ subject to the certain conditions. The exemption is applicable only in respect of “specified taxable services” provided to the SEZ developer/unit. “Specified taxable services” means those services which are required in relation to the authorized operations **and which have been approved by the Approval Committee of the SEZ.** It is to be noted that with regard to services that are not “specified taxable services” there is no exemption under the service tax law but the service provider may claim an exemption under the SEZ Act. Presently, the modus operandi of the exemption is as follows:

- (i) If the “specified taxable services” are “wholly consumed” within the SEZ, then the service provider is not required to charge service tax to the service recipient (developer or units of SEZ). The onus would be upon the service provider to prove that the services are ‘wholly consumed’ within the SEZ.
- (ii) In respect of “specified taxable services” that are not “wholly consumed” within the SEZ, only a SEZ developer/unit would be the person who is entitled to claim the exemption in

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respect of the “specified taxable services” provided to it by way of refund i.e. he is required to pay service tax on such “specified taxable services” to the service provider (or to the Government in case of reverse charge) and thereafter claim refund in accordance with the prescribed procedure.

2.4.2 The Government has now issued a new notification No. 17/2011-ST dated 1.3.2011 (superseding the earlier notification) to lay down the procedure for exemption in such cases. However, there have been two significant changes which are explained below.

2.4.3 Broadly speaking, the modus operandi of the earlier notification is retained i.e. in respect of specified taxable services “wholly consumed” within the SEZ, the provider of service (or the SEZ developer/ unit in case of reverse charge) would not charge (or pay in case of reverse charge) service tax and in respect of services not “wholly consumed” the SEZ developer/unit would claim a refund of tax paid to the supplier (or the Government in case of reverse charge). However, the expression “wholly consumed” has now been defined to reduce disputes on this front. Accordingly, a specified taxable service shall be considered to be “wholly consumed” within the SEZ if the relevant criteria given below as applicable to the service is satisfied. The criteria are as follows:

- (a) such services as are listed in rule 3(1)(i) of the Export of Services Rules, 2005 (e.g., interior decorator, architect, construction services, etc. i.e., immovable property criterion) would be considered as “wholly consumed” in the SEZ if they are in relation to an immovable property situated within the SEZ; or
- (b) such services as are listed in rule 3(1)(ii) of the Export of Services Rules, 2005 (e.g., steamer agent, custom house agent, cargo handling, storage and warehousing, tour operator services, etc. i.e. performance based criterion) would be considered as “wholly consumed” in the SEZ if they are wholly performed within the SEZ; or
- (c) such services other than those falling under (a) and (b) above, would be considered as “wholly consumed” only if they are provided to a SEZ Developer/Unit, who does not own or carry on any business other than the operations in the SEZ.

2.4.4 Further there are two other significant changes :

- (i) In cases where the specified taxable services are not “wholly consumed” within the SEZ i.e. they are shared for both SEZ operations as well as domestic tariff area operations, the refund of service tax would be available on *pro rata* basis i.e. the ratio of SEZ turnover to total turnover.
- (ii) The time limit for claiming refund under the new notification has been extended to 1 year (earlier 6 months) from the end of the month in which service tax has been paid by the SEZ developer/unit.

CHANGES EFFECTIVE FROM 1.4.2011

3. GENERAL

3.1 Increase in the rate of Interest payable on delayed payment of service tax & delayed deposit of excess service tax collected-From 13% p.a. to 18% p.a.

3.1.1 The interest on delayed payment of service tax which is presently 13% p.a. (Notification No. 26/2004 ST dated 10.09.2004) has now been increased to 18% p.a. w.e.f. 1.4.2011 [Notification No. 14/2011 dated 1.3.2011].

3.1.2 Excess service tax collected from the service recipient is liable to be deposited to the Government treasury under section 73A of the Act. Any delay in such deposit attracts interest u/s. 73B. This interest rate has been increased to 18% p.a. from the present rate of 13% p.a. [Notification No. 15/2011 dated 1.3.2011].

3.2 Forex money changing services – Valuation provisions introduced with also composition scheme option

3.2.1 The Finance Act, 2008, expanded the scope of services liable for service tax under the category of “Banking and Other Financial Services” to include “purchase and sale of foreign currency including money changing”. Under sub-rule (7B) of Rule 6 of the Service Tax Rules, 1994, the persons involved in the business of forex money changing have an option to pay service tax @ 0.25% of the gross amount of currency exchanged towards discharge of their service

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tax liability. This option is not available where consideration for the service has been separately stated in the invoice/bill/challan in which case he would have to pay on the said consideration at full rate [presently 10.30%].

3.2.2 The Government has amended the valuation rules and the aforesaid sub-rule (7B) of Rule 6 of the Service Tax Rules, 1994, to provide as under:

- (a) A new rule 2B has been introduced in the Service tax (Determination of Value) Rules, 2006 prescribing the value of the money changing service in terms of section 67 of the Act. The value shall be as follows:
 - (i) The difference between the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency for that day multiplied by units of currency exchanged;
 - (ii) If RBI reference rate is not available the value shall be 1% of the value of money exchanged in Indian rupees;
 - (iii) When both the currencies are not Indian rupees, 1% of the lesser of the amounts receivable if the two currencies are converted at RBI reference rate.
- (b) The rate of composition under rule 6(7B) has been lowered from 0.25% to 0.1% of the gross amount of money exchanged. However, the compulsion of paying service tax at full rate on service charges if billed separately has been dispensed with.

Thus, now the assessee will have the option to pay service tax @0.1% of gross amount exchanged or else at standard rate [10.3% presently] on the value of service in terms of rule 2B, as mentioned in (a) above.

3.2.3 The Valuation Rules have also given two examples for determination of value u/r. 2B which are given as under.

“Example I:

US\$ 100 are sold by a customer at the rate of ₹ 45 per US\$.

RBI reference rate for US \$ is ₹ 45.50 for that day.

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The taxable value shall be ₹ 50 [i.e., (45.50 - 45) x 100]

Example II:

INR 70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is ₹ 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is ₹ 69.

The taxable value shall be ₹ 1000 [i.e. (69 – 70) x 1000]”

3.2.4 Thus in view of the above amendments w.e.f. 1.4.2011, service providers engaged in the business of forex money changing have the following two options to pay service tax –

- (i) pay service tax at the full rate [presently 10.3%] on the value as determined in accordance with Rule 2B of the valuation Rules as explained in paras 3.2.2–3.2.3 above; or
- (ii) pay service tax @ 0.10% of the gross amount of currency exchanged.

The above option is at the desire of the service provider.

3.3 Changes in presumptive tax payable in relation to ‘Transport of passengers by air’ services

3.3.1 The Government has made changes in the presumptive tax payable on transport of passengers by air services *vide* Notification No. 4/2011-ST, dated 1.3.2011 w.e.f. 1.4.2011. A synopsis of the position prior to the amendment and post amendment is explained in table below:

Sl. No.	Nature of Travel	Class	Service Tax payable [excluding cess]	
			1.7.2010 – 31.3.2011	w.e.f. 1.4.2011
1(a)	Domestic [Travel within India]	Economy class (See note 2 below)	(i) 10% of gross value of ticket; or (ii) ₹ 100/- per journey whichever is less	(i) 10% of gross value of ticket; or (ii) ₹ 150/- per journey whichever is less

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Sl. No.	Nature of Travel	Class	Service Tax payable [excluding cess]	
			1.7.2010 – 31.3.2011	w.e.f. 1.4.2011
1(b)	Domestic	Other than Economy class	Same as above	At applicable full service tax rates. Currently 10%
2(a)	International [Embarking in India]	Economy class (see note 2 below)	(i) 10% of gross value of ticket; or (ii) ₹ 500/- per journey whichever is less	(i) 10% of gross value of ticket; or (ii) ₹ 750/- per journey whichever is less
2(b)	International	Other than Economy class	At applicable full service tax rates. Currently 10%	At applicable full service tax rates. Currently 10%

Notes :

1. The exemption in Sl. No. 1 & 2(a) would apply only if the airline does not take credit of inputs used for providing taxable service. However, it appears credit on 'input services' and 'capital goods' are allowed.
2. 'Economy class' means -
 - (i) where there is more than one class of travel, the class attracting the lowest standard fare; or
 - (ii) where there is only one class of travel, that class.

3.4 New Exemptions

Exemption for Transportation of goods by air, road or rail for overseas legs

- 3.4.1 Taxable services of transport of goods by air, road or rail provided to any person located in India, when such services have been used for

transportation of goods from a place located outside India to a final destination which is also located outside India have been exempted. **[Notification No. 8/2011-ST dated 1.3.2011]**

Exclusion of air freight from the taxable value of Transportation of goods by air services

- 3.4.2 In respect of transport of goods by air service, the value of air freight to the extent included in value of goods as per section 14 of the Customs Act, 1962, or the rules made thereunder for the purpose of charging customs duties have been exempted **[Notification No. 9/2011-ST dated 1.3.2011]**.

CHANGES IN EXPORT AND IMPORT RULES

3.5 *Recategorisation of certain services under the Export Rules and Import Rules*

- 3.5.1 The existing provisions of the Export of Services Rules, 2005 ("Export Rules") categorize the special services provided by builder to the prospective buyers in a residential complex such as providing preferential location or external or internal development of complexes for extra charges [65(105)(zzzzu)] under rule 3(1)(iii) of the Export Rules according to which services shall be considered as exported if the recipient of the service is located outside India. However, since the said service is in relation to immovable property, it has now been included in rule 3(1)(i) along with other services relating to immovable property and hence these services would now be considered as exported only if the immovable property is outside India.
- 3.5.2 Further the following services which are categorized under the 'performance based criterion' [rule 3(1)(ii)] are recategorized under the 'location of service recipient' criterion [rule 3(1)(iii)] :
- (i) Credit rating agency
 - (ii) Market research agency
 - (iii) Technical testing and analysis
 - (iv) Transport of goods by Aircraft

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- (v) Goods transport agency services
- (vi) Opinion poll agency
- (vii) Transport of goods by rail.

Thus, these services would now be considered as exported if location of the service recipient is outside India as against the existing rule where the said services would be considered as exported only if services are at least partly performed outside India. The condition of receipt in foreign currency still exists.

- 3.5.3 Similarly, the services of rail travel agent [65(105)(zz)] and health services [65(105) (zzzo)] have been recategorized from rule 3(1)(iii) of Export Rules ['location of recipient' criterion] to 3(1)(ii) of Export Rules ['performance based' criterion]. Thus, these services would now be considered as exported only if the services are wholly or partly performed outside India and money is received in foreign currency.
- 3.5.4 Similar amendments have also been made in Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 ('Import Rules'). [Notification Nos. 12/2011 and 13/2011 both dated 1.3.2011.]

THE POINT OF TAXATION OF RULES, 2011

3.6 Introduction of the Point of Taxation Rules

Preamble

- 3.6.1 The Government has formulated Point of Taxation of Rules, 2011 w.e.f. 1.4.2011 that set out the criteria to decide the point of time when a service is deemed to have been provided for the purpose of collection of service tax and determination of rate of service tax. The Point of Taxation Rules, 2011 would not apply to the invoices issued prior to 1.4.2011. The salient features of the Point of Taxation Rules, 2011 are as under.

Basic general rule – earlier of date of provision of service/issue of invoice/receipt of payment relevant

3.6.2 The general rule will be that the time of provision of service will be the earliest of the following dates:

- A. In all cases (except 'B' below) :
 - (i) Date on which service is provided or to be provided
 - (ii) Date of issue of invoice
 - (iii) Date of receipt of payment
- B. In case where the service recipient is liable to pay service tax on reverse charge basis u/s. 66A (import of services) :
 - (i) Date on which service is provided or to be provided
 - (ii) Date of receipt of invoice by the service recipient
 - (iii) Date of remitting the overseas payment.

3.6.3 The above is the basic rule to decide at what point of time a service is deemed to be provided. In this regard in respect of the date in clause (i) above, the date on which service is provided is well understood but the date on which service is 'to be provided' cannot be comprehended. This may lead to various issues and controversies. A service provider may enter into a contract to provide services but may not have provided the service yet, nor received the payment nor even issued an invoice but as per the Point of Taxation Rules, he maybe deemed to have provided the service!

3.6.4 The above is the basic rule. The exceptions to the above rule is given in subsequent rules which deal with the following:

- (i) Determination of point of taxation in case of change of rate of tax
- (ii) Payment of tax in cases of new services
- (iii) Determination of point of taxation in case of continuous supply of service
- (iv) Determination of point of taxation in case of associated enterprises
- (v) Determination of point of taxation in case of copyrights, etc.

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Determination of point of taxation in case of change of rate of tax

3.6.5 Rule 4 of the Point of Taxation Rules, 2011 provides when a service is deemed to have been provided in cases where there is a change of rate of tax. In such cases, the point of taxation is determined as under.

(a) in case the taxable service has been provided before the change of rate and :

Sl. No.	Event	Point of taxation	Rate of Tax applicable
1.	Issue of invoice and receipt of the payment are after the change of rate of tax	(i) Date of receipt of payment; or (ii) Date of issue of invoice; whichever is earlier	New rate
2.	Invoice has been issued prior to change of rate of tax and receipt of the payment after the change of rate of tax	Date of issue of invoice	Old rate
3.	Invoice has been issued after the change of rate of tax but payment for the same has been received before the change of rate of tax	Date of payment	Old rate

(b) in case the taxable service has been provided after the change of rate and :

Sl. No.	Event	Point of Taxation	Rate of Tax applicable
4.	Invoice has been issued prior to change of rate of tax and receipt of the payment after the change of rate of tax	Date of payment	New rate

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Sl. No.	Event	Point of Taxation	Rate of Tax applicable
5.	Issue of invoice and receipt of the payment are before the change of rate of tax	(i) Date of receipt of payment; or (ii) Date of issue of invoice; whichever is earlier	Old rate
6.	Invoice has been issued after the change of rate of tax but payment for the same has been received before the change of rate of tax	Date of issue of invoice	New rate

3.6.6 In this regard the following points need to be noted –

- (i) The date of provision of service is not relevant when there is change in the rate of tax. The date of issue of invoice and the date of receipt of payment are relevant.
- (ii) The scenario (a) of para 3.6.5 above, does not deal with a situation where the event of issue of invoice and payment both happens before the change of rate of tax and scenario (b) of para 3.6.5 does not deal with a situation where the event of issue of invoice and payment both happen after the change of rate of tax. Thus, in both these cases the general rule in rule 3 (para 3.6.2) will apply i.e. the time of provision of service will be the earliest of the following dates:
 - (a) Date on which service is provided or to be provided
 - (b) Date of issue of invoice
 - (c) Date of receipt of payment
- (iii) In case of scenario b(4) and b(6) of para 3.6.5 service tax would have already been paid at the old rate when the invoice has been issued or payment received before the change of rate of tax, applying the general rule (Rule 3). Subsequently, the rate may increase or decrease. Accordingly

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there could be a short payment or excess payment. In case of short payment the assessee may have to deposit the service tax. No interest may apply if the assessee deposits it within the due date reckoned from the point of taxation i.e. date of payment in case of b(4) and date of issue of invoice in case of b(6). In case of excess payment, presumably the only course is to apply for a refund? Further in scenario b(4), the invoice would have been issued disclosing service tax at old rates. Thus, the issue would be how to correct the previous invoice. Presumably, a supplementary invoice or a credit note may have to be issued. These issues need to be addressed by the Government.

Payment of tax in cases of new services

- 3.6.7 Rule 5 of the Point of Taxation Rules, 2011 provide that in the case of new services (other than continuous supply of service) brought into the tax net, no tax shall be payable –
- (i) to the extent the invoice has been issued and the payment received before such service became taxable;
 - (ii) if the payment has been received before the service becomes taxable and invoice has been issued within the time limit specified in rule 4A of the service tax rules.

Determination of point of taxation in case of continuous supply of service

- 3.6.8 A continuous supply of service has been defined to mean –
- (i) any service provided or to be provided continuously by a service provider under a contract for a period more than 3 months; or
 - (ii) such services which the Central Government prescribes by a notification to be in the nature of continuous supply of services.
- 3.6.9 In case of continuous supply of service, the point of taxation is the ***'specified date' or date of issue of invoice or date of receipt of payment, whichever is earlier.***

'Specified date' would be the date specified in the contract as to when the payment is liable to be paid by the service receiver in

case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time. If there is no specified date then the point of taxation would be the earliest of the following dates:

- (i) Date of issue of invoice; or
- (ii) Date of receipt of payment

Determination of point of taxation in case of associated enterprises

3.6.10 The point of taxation in case of transaction between associated enterprises as defined in section 92A of the Income-tax Act, 1961 shall be the earliest of the following dates—

- (i) date on which payment has been made; or
- (ii) date on which invoice has been issued; or
- (iii) date on which debit or credit is made in books of account of the person liable to pay service tax [which would normally be the service provider but in certain cases would be the service recipient when service tax is payable under reverse charge].

Determination of point of taxation in case of copyrights, etc.

3.6.11 In respect of royalty payments received in respect of copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when the service was performed and subsequently the use or the benefit of these services by a person other than the supplier gives rise to any payment of consideration, the service shall be treated as having been provided —

- (i) each time a payment in respect of such use or benefit is received by service provider; or
 - (ii) each time the service provider issues an invoice,
- whichever is earlier.

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CHANGES IN SERVICE TAX RULES, 1994

3.7 Invoice/bill/challan to be issued within 14 days from 'provision' of service instead of 'completion' of services

3.7.1 Rule 4A of the Service Tax Rules, 1994 make it mandatory for every service provider to issue an invoice/bill/challan within a period of 14 days from the date of **'completion'** of services or receipt of payment towards value of such taxable services, whichever is earlier. Further, where payment is not received and the services are provided continuously for successive periods of time and their value is determined periodically, the service provider can raise his invoice within 14 days from the last day of the said period. The rules have now been amended to provide that w.e.f. 1.4.2011 the invoice / bill / challan has to be issued within a period of 14 days from the date of **'provision'** of services or receipt of payment towards value of such taxable services, whichever is earlier. Further, the provision relating to continuous service are sought to be omitted w.e.f. 1.4.2011. These changes are consequent to the formulation of the 'Point of Taxation, Rules, 2011' (see para 3.6) which prescribes the rules to determine the time of 'provision' of the service including continuous supply of service.

3.8 Date for determining the rate of service tax

3.8.1 A new rule 5B has been inserted in the Service Tax Rules, 1994 w.e.f. 1.4.2011 to provide that the rate of service tax in case of service provided or to be provided shall be the rate prevailing when the 'services are deemed to have been provided' under the Point of Taxation Rules, 2011. [For detail analysis of the Point of Taxation Rules, 2011 refer para 3.6.5].

3.9 Payment of service tax to the Government to be on provision of service or issue of invoice or receipt of payment whichever is earlier

3.9.1 Presently, service tax is liable to be paid only by 5th /6th of the month following the month in which the 'value of taxable services' are received. Thus, the payment of service tax can be deferred until the payment of value is received. Rule 6(1) of the Service Tax Rules, 1994 has now been amended w.e.f. 1.4.2011 to provide that service tax shall be paid by 5th /6th of the month following the month in

which **'the service is deemed to be provided'** as per the Point of Taxation Rules, 2011. Thus, now the due date is governed by date and point of time when 'service is deemed to be provided'. The general rule when service is deemed to be provided is the earliest of the following dates:

- (i) Date on which service is provided or to be provided
- (ii) Date of issue of invoice
- (iii) Date of receipt of payment
- (iv) Subject to the exceptions in certain circumstances as provided in para 3.6.4. – Point of Taxation Rules.

Thus, now service tax would be payable on a hybrid system i.e. accrual or cash whichever is earlier.

3.9.2 The above is a very major change envisaging the following –

- (i) keeping track of several dates at least 3 dates as against the present scenario where only date of receipt of payment is relevant.
- (ii) payment of tax even on amounts 'not received'. For example, where the tax point is the date of issue of invoice the facility to defer the payment of service tax until receipt of payment would not be available. An assessee would have to pay service tax immediately on issue of invoice even if the amount is not received. The payment of tax upon issue of invoices without having received the payment would mean that the tax would have to be financed by internal accruals or borrowings which in most cases would be difficult for service providers.
- (iii) Further, there are no provisions relating to bad debt adjustment or reduction in the invoices in case monies are not received or monies are received less as compared to the invoice amount. Hence the service providers would have to pay tax even on monies not received. Thus, the service provider would be out of pocket if they have to pay service tax on invoices issued but the monies for the service are not received. In almost all VAT / GST regimes internationally, there is a provision for adjustment of bad debts.

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- (iv) The simplicity of payment of tax on receipt of money is given a go by.
 - (v) The avowed purpose is presumably to bring the liability for payment of service tax in line with the Excise and VAT laws but in these laws tax is not payable on advances.
- 3.9.3 Consequential amendments have also been made for quarterly payment by sole proprietary concerns and partnership firms and for payment of tax in the month of March which needs to be paid by 31st March. Similarly, proviso providing non-payment of tax on value pertaining to a period prior to the service becoming taxable is omitted since the same is provided in the Point of Taxation Rules, 2011.
- 3.9.4 Further, in case of transaction between associated enterprises as defined in section 92A of the Income-tax Act, 1961 the due date for payment of service tax shall be 5th / 6th of the month following the month (except the month of March which needs to be paid by 31st March) in which the earlier of following dates:
- (i) date on which payment has been made; or
 - (i) date on which invoice has been issued; or
 - (ii) date on which debit or credit is made in books of account of the person liable to pay service tax [which would normally be the service provider but in certain cases would be the service recipient where service tax is payable under reverse charge].

[Refer para 3.6.10 of the Point of Taxation Rules]

3.10 Credit of service tax paid on advance received for service to be provided but subsequently service is not provided

3.10.1 Rule 6(3) of Service Tax Rules, 1994 provides for adjustment of excess service tax paid on service not provided wholly or partially against the subsequent period's service tax liability subject to the condition that the assessee has refunded the value of taxable services along with service tax thereon to his client.

3.10.2 Rule 6(3) of Service Tax Rules, 1994 is now being amended w.e.f. 1.4.2011 to provide that where service tax is paid on invoice issued

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or advance payment received for a 'service to be provided', but which the assessee has not so provided wholly or partially for any reason he can take 'credit' of such tax subject to the condition that –

- (i) where the assessee had received the payment, the assessee should have refunded the value of taxable service pertaining to the services not so provided along with service tax thereon to the payer; or
- (ii) where the assessee has not received any payment, but had paid the service tax on issue of invoice the assessee should have issued a credit note for value of service not so provided.

3.10.3 It appears that the word 'credit' should be understood as tax paid to the treasury which can be adjusted against the subsequent liability as provided in the present rule 6(3). In the event for any reason if it is not possible to adjust against the subsequent liability it appears refund can be claimed in the absence of any restrictive condition that the credit can only be adjusted against the subsequent liability.

3.10.4 The most important issue which still remains as in the erstwhile rule is that such excess adjustment is available only if 'service is not wholly or partially provided' but there is no recourse in case of excess payments *simpliciter*, say due to clerical mistake. The adjustment under rules 6(4A) and 6(4B) is only up to tax of ₹ 2,00,000/- (w.e.f. 1.4.2011).

3.11 Limit for adjustment of excess service tax paid increased from ₹ 1,00,000/- to ₹ 2,00,000/-

3.11.1 Rules 6(4A) and 6(4B) were introduced w.e.f. 1.3.2007 to provide for adjustment of excess service tax paid by an assessee against his **succeeding** period's (month/quarter) liability subject *inter alia* to the condition that the excess amount allowed to be adjusted (in a month / quarter) would be a maximum of ₹ 1,00,000/-. This limit is now increased to ₹ 2,00,000/- w.e.f. 1.4.2011. However, the present dispensation that where an assessee is centrally registered, he may adjust the excess tax paid on account of delayed receipt of details of value of taxable services received from other premises, without any monetary limit continues. Other conditions in the Rules also continue.

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3.12 Recovery of service tax determined on self assessment

3.12.1 A new sub-rule (6A) to rule 6 of Service Tax Rules, 1994 has been inserted which is effective from 1.4.2011 to provide that where the assessee has not paid the service tax as determined by him by way of self assessment i.e. while filing the service tax returns, such tax shall be recoverable along with interest in the manner prescribed under section 87 of the Act. The TRU circular clarifies that there shall be no need to issue a show cause notice and adjudicate under section 73 of the Act for the recovery of such self-assessed amounts.

4. CHANGES EFFECTIVE FROM THE DATE OF ENACTMENT OF THE FINANCE BILL

4.1 Retrospective amendments

Tour operator services for point to point transportation of passengers exempted retrospectively from 1.4.2000

4.1.1 Notification No. 20/2009-ST dated 7.7.09 exempted w.e.f. 7.7.09 tour operator services provided by tour operator having a contract carriage permit for interstate or intra-state transportation of passengers provided it is not in relation to tourism, conducted tours, charter or hire service. The Bill now proposes to grant this exemption retrospectively w.e.f. 1.4.2000 i.e. the date of introduction of tour operator services. The Bill also proposes that the tour operator who had provided such services during the period 1.4.2000 to 6.7.2009 and paid service tax thereon shall be eligible to claim refund of such tax paid provided the refund claim for the same has been filed within 6 months from the date of enactment of the Bill and the tour operator had borne the incidence of tax [Section 11B]

Membership fee collected by club or association representing industry or commerce is exempted retrospectively from 16.6.05 to 31.3.08

4.1.2 The Bill seeks to grant exemption from service tax in respect of membership fee collected by a club or association formed for representing industry or commerce retrospectively from 16.6.2005 to 31.3.2008. The Bill also proposes that the club or association which had provided the said services during the period 16.6.2005 to 31.3.2008 and paid service tax thereon shall be eligible to claim

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refund of such tax paid provided the refund claim for the same has been filed within 6 months from the date of enactment of the Bill.

4.2 Increase in the maximum late fee for filing returns from ₹ 2,000/- to ₹ 20,000/-

4.2.1 The Bill seeks to amend section 70 to increase the maximum 'late fee' for furnishing delayed return from the present ₹ 2,000/- to ₹ 20,000/.

4.3 Conclusion of adjudication proceedings on payment of tax, interest and 25% of the tax as penalty before the issue of show cause notice

4.3.1 Under the existing dispensation, two provisions provide for a complete waiver of penalties or conclusion of proceedings before adjudication order is passed:

- (i) in cases where no show cause notice has been issued and –
 - (a) service tax is short levied or short paid or has not been levied or not paid or is erroneously refunded ("said defaults");
 - (b) there is no fraud, collusion, wilful misstatement or suppression of facts or contravention of any provisions of the law with an intent to evade payment of service tax;
 - (c) the assessee has paid such service tax, ascertained on his own or by the Central Excise officer, along with interest before the issue of a show cause notice; and
 - (d) informed the Central Excise officer of such payment in writing,
the Central Excise officer shall not issue a show cause notice in respect of the amount so paid [Sections 73(3) & (4)];
- (ii) in cases where a show cause notice has been issued alleging—
 - (a) the said defaults; and
 - (b) fraud, collusion, wilful misstatement, etc.

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and the assessee has within 30 days from the receipt of the notice paid the said tax along with interest and penalty equal to 25% of the service tax specified in the notice, all the proceedings (including all penalties) in respect of the said defaults shall be deemed to be completed [Section 73(1A) read with the provisos to section 73(2)].

4.3.2 The Bill seeks to omit the provisions mentioned in clause (ii) above and insert a new provision to the following effect. In cases where no show cause notice has been issued and –

- (a) the said defaults are found during the course of audit, investigation or verification;
- (b) the true and complete details of transactions are available in the “specified records”. ‘Specified records’ means records including computerised data as required to be maintained by the assessee in accordance with any law or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the ‘specified records’;
- (c) the assessee has paid, before the issue of a show cause notice, such service tax, ascertained on his own or by the Central Excise officer, along with interest and penalty equal to 1% of the service tax for each month for which the default continues subject to a maximum of 25% of the service tax; and
- (d) informed the Central Excise officer of such payment in writing, then –
 - (i) the Central Excise officer shall not issue a show cause notice in respect of the said defaults; and
 - (ii) all the proceedings (including all penalties) in respect of the said defaults shall be deemed to be concluded;

It appears this facility is available even in cases where there is a fraud, collusion, wilful misstatement or suppression of facts or contravention of any provisions of the law with an intent to evade payment of service tax.

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- 4.3.3 The effect of the amendment would be, broadly, that the assessee has an option before the issue of a show cause notice to either pay –
- (a) only the tax along with interest; or
 - (b) the tax along with interest *and penalty equal to 1% of the service tax for each month for which the default continues subject to a maximum of 25% of the service tax.*

In the first case, the proceedings would be open and the department would be entitled to impose relevant penalties if it finds any fraud, collusion, wilful misstatement, etc. However, in the latter case, the proceedings shall be deemed to be concluded and no penalties would be imposable.

- 4.3.4 Lastly, post-amendment there would be no option to pay tax along with interest and penalty post issue of Show Cause Notice so as to conclude the proceedings as is presently existing.

4.4 Concessional rate of interest for the service providers in small scale sector

- 4.4.1 The Bill seeks to amend section 75 to provide a concession of paying interest at a reduced rate for tax-payers –
- (a) whose turnover, in any of the financial years covered by a show cause notice issued under section 73 does not exceed ₹ 60 lakhs; or
 - (b) whose turnover in the immediately preceding financial year does not exceed ₹ 60 lakhs.

The concessional rate of interest is 3% below the notified rate of interest which w.e.f. 1.4.2011 would be 18% p.a.

- 4.4.2 Similar amendments have also been made in respect of interest on excess tax collected under section 73B of the Act.

4.5 Penalties under sections 76 and 78 sought to be reduced

Penalty u/s. 76 proposed to be halved

- 4.5.1 Presently there is penalty u/s. 76 for delayed payment of service tax. The amount of penalty u/s. 76 is now proposed to be halved. Thus, the penalty would be –
- (i) ₹ 100/- (presently ₹ 200/-) per day of default; or

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- (ii) 1% (presently 2%) **per month** on the amount of delayed tax, *whichever is higher* but restricted to 50% (presently 100%) of the amount of service tax.

Penalty u/s. 78 proposed to be reduced substantially

- 4.5.2 Under the existing dispensation, in case where service tax is short levied or short paid or has not been levied or not paid or is erroneously refunded by reason of fraud, collusion, wilful misstatement or suppression of facts or contravention of any provisions of the law with an intent to evade payment of service tax, penalty under section 78 is imposable to the extent of 100%–200% of the tax. However, the penalty u/s. 78 shall be reduced to 25% of the service tax, where the assessee has, within 30 days from the receipt of the adjudication order, paid the said tax along with interest and penalty equal to 25% of the service tax. Further, u/s. 80 the Central Excise Officer has a discretion to grant complete waiver of penalty u/s. 78 on 'reasonable cause' being shown by the assessee.
- 4.5.3 The Bill seeks to amend section 78 to provide a penalty up to 100% of the tax involved (from the present 100%–200%) for the aforesaid defaults. However, the Bill has sought to provide for a reduction in penalty where *true and complete details of transactions are available in the "specified records"*. In such cases, the aforesaid penalty would be only 50% of the tax involved. A further reduction of the penalty in such cases (i.e., where true and complete details of transactions are available in the "specified records") to 25% of the tax involved is also sought to be provided if the tax, interest and penalty of 25% of the tax is paid within 30 days (90 days in case of assessees having value of taxable services less than 60 lakhs) from the date of communication of the adjudication order.
- 4.5.4 The Bill has also sought to amend section 80 to provide that the discretion with the Central Excise Officer to waive of penalty u/s. 78 on 'reasonable cause' ground would be available only where *true and complete details of transactions are available in the "specified records"* and not in other cases.

4.6 Penalty u/s. 77 proposed to be increased

- 4.6.1 Section 77 is proposed to be amended –
- (i) to increase the maximum penalty from the present limit of ₹ 5,000/- to ₹ 10,000/- in case of following contraventions –

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- (a) failure to keep, maintain and retain books of account and other documents;
 - (b) failure to make e-payment where mandatory;
 - (c) failure to issue invoices in the prescribed format;
 - (d) failure to account for an invoice;
 - (e) contravention of the Act or Rules for which there is no separate penalty
- (ii) to alter the penalty structure for the following defaults:
- (a) Failure to register within the due date;
 - (b) Failure to appear in response to a summon or furnish information/ produce documents

The change would be as under :

Present	Proposed
Higher of - (i) ₹ 5,000 or (ii) ₹ 200 per day during which the default continues	Higher of - (i) ₹ 10,000/- or (ii) ₹ 200 per day during which the default continues

4.7 Power to authorize search to vest with Joint Commissioner and power to execute a search to vest with the Superintendent

4.7.1 Under the existing dispensation (section 82), the Commissioner of Central Excise has the power to search or authorize the AC/DC to search. The Bill seeks to amend the functionaries empowered to authorize and execute a search. It seeks to provide that the 'Joint Commissioner of Central Excise' shall have the power to search or authorize the 'Superintendent of Central Excise' to search.

4.8 Service tax dues to be a first charge on property

4.8.1 Under the existing dispensation, service tax, interest, penalty and other sums due to the Government are ranked with the unsecured

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creditors and do not have priority over the secured creditors since service tax dues are not first charge on the properties of the taxpayer [*Union of India vs Sicom Ltd.* (2009) 233 ELT 433 (SC)]. The Bill seeks to insert a new section 88 to provide that the service tax dues (tax, interest, penalties, etc.) shall be the first charge on the property of the taxpayer. Consequently, the Government would rank as a secured creditor except in respect of the following debts which would have priority over the Government –

- (i) overriding preferential payments (Workman's dues and other secured creditors ranking *pari passu* in the event of liquidation) under section 529A of the Companies Act, 1956;
- (ii) the debts due to banks and financial institutions under the Recovery of Debts due to Banks and Financial Institutions Act, 1993;
- (iii) the secured debts under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4.9 Prosecution provisions proposed to be re-introduced

4.9.1 Sections 88 to 92 provided for prosecution for certain offences such as failure to furnish prescribed returns, false statement in verification, abetment of false return, etc. These provisions were omitted by the Finance (No.2) Act, 1998 with effect from 16.10.1998. Ever since, there were no prosecution provisions under the Service Tax law. The Bill has sought to introduce prosecution provisions by proposing to enact a new section 89. Further sections 9A, 9AA, 9B, 9E and 34A of the Central Excise Act, 1944 have been made applicable to service tax. These provisions together constitute the provisions relating to prosecution of offences which are briefly described below.

4.9.2 Section 89 prescribes the offences and the quantum of punishment. The punishable offences enumerated in section 89(1) are the following :

- (i) provision of taxable services or *receipt of any taxable services where the recipient is liable to pay service tax*, without an invoice issued in accordance with the provisions of the Act or the Rules made thereunder;

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N.B.

- (a) The recipient of the service is not in a position to ensure that invoice issued is under the Service Tax law (say, as per rule 4A). An overseas service provider may not even be aware of rule 4A.
- (b) Presumably, invoices issued belatedly or not in accordance with rule 4A would not trigger the offence.
- (ii) availment and utilisation of credit without actual receipt of taxable service or excisable goods either fully or partially in violation of the Act or Credit Rules;
- (iii) maintenance of false books of account;
- (iv) failure to supply information or supply of false information;
- (v) failure to pay to the Government any amount collected as service tax beyond a period of six months from the date on which such payment became due.

4.9.3 The quantum of punishment imposable is detailed in the table below:

Sl. No.	Offence	Punishment
1.	Offences where 'amount' exceeds ₹ 50 lakhs	Imprisonment from 6 months up to 3 years.
2.	Other offences	Imprisonment up to 1 year.
3.	Second and subsequent offence	Imprisonment from 6 months up to 3 years.

The punishment mentioned in Sl. Nos. 1 and 3 above, cannot in absence of 'special and adequate reasons' to be recorded in the judgment of the court be reduced below six months. Such special and adequate reasons would not include the following:

- (i) conviction of the accused for the first time for an offence under the Act;
- (ii) payment of penalty or any other action taken for the same act which constitutes the offence

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- (iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of the offence.
 - (iv) the age of the accused.
- 4.9.4 The above prosecution provisions can be initiated only with the previous sanction of the Chief Commissioner of Central Excise.
- 4.9.5 The provisions of ss. 9A, 9AA, 9B, 9E and 34A of the Central Excise Act, 1944 have been made applicable to service tax. These are briefly dealt with below:
- (i) The offences would be 'non-cognizable' i.e. an offence in which a police officer has no authority to arrest without a warrant. Further the Chief Commissioner of Central Excise is also empowered to compound the offences on payment of the compounding amount as may be prescribed [s. 9A].
 - (ii) If an offence is committed by a company (which includes a firm), the persons liable to be proceeded against and punished are : (a) the company; (b) every person, who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business except where he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence; and (c) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed. [s.9AA].
 - (iii) The court is empowered to publish the name, place of business, etc. of persons convicted under the Act [s. 9B]
 - (iv) In case of a person who is less than 18 years of age, the court, under certain circumstances, is empowered to release the accused on probation of good conduct under section 360 of the Code of Criminal Procedure, 1973 or to release the offenders on probation under the Probation of Offenders Act, 1958. This is an exception to para 4.9.2(iv) above. [s. 9E]
 - (v) the imposition of penalty would not prevent infliction of other punishment on the offender. [s. 34A].

5. CHANGES EFFECTIVE FROM A DATE TO BE NOTIFIED AFTER ENACTMENT OF THE FINANCE BILL

TWO NEW SERVICES BROUGHT UNDER THE SERVICE TAX NET

5.1 Introduction of two new services

5.1.1 Two new services are proposed to be specifically included in the list of taxable services. Their scope is explained below.

Services provided by a restaurant

5.1.2 The Bill seeks to introduce service tax on services provided by a restaurant if the restaurant –

- (a) has air conditioning facility in any part of the restaurant at any time during the financial year; and
- (b) it is licensed to serve alcoholic beverages.

Service tax will be payable on the services in relation to serving of food or beverage (including alcoholic beverages) in the restaurant premises.

5.1.3 The TRU Circular has noted as under –

“The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP. Finance Minister has announced in his budget speech 70% abatement on this service, which is, *inter-alia*, meant to separate such portion of the bill as relates to the deemed sale of meals and beverages. The relevant notification will be issued when the levy is operationalized after the enactment of the Finance Bill”.

5.1.4 In this regard the following points need to be noted –

- (i) Even if a part of the restaurant is air conditioned and serving alcohol the entire service provided by the restaurant would be subjected to service tax including the services provided by the non-air conditioned portion.
- (ii) The intention is to levy service tax on the services component only.

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- (iii) Though the TRU Circular specifies the exclusion of meals portion in the composite contract or mere sale of food by way of pick-up or home delivery, the 70% abatement option would be administratively more convenient since there could be valuation issues for the value to be excluded.

5.1.5 Thus now one more service would be subject to VAT as well as service tax. *Hence eating and drinking in cool comfort will certainly result in hot discomfort on seeing the 3.09% increase in the restaurant bill ! Consider EATING HOME ALONE!*

Short-term hotel accommodation

5.1.6 Presently, hotels providing rooms were not subject to service tax on the room rentals/room charges. For hotels service tax was applicable only on the conference services and hall rentals for marriages, seminars, etc. However now the Bill seeks to introduce service tax on hotel room charges also. The levy is on 'short term accommodation' provided by hotels, inns, guest houses, clubs and others and at camp-sites. Short-term accommodation would mean where the continuous period of stay is less than 3 months. Thus, it appears that if the invoice pertains to stay beyond 3 months it would be outside the ambit of service tax.

5.1.7 The TRU Circular has clarified that –

“2.2 Actual levy will be restricted to accommodation with declared tariff of ₹ 1,000/- per day or higher by an exemption notification. Once this requirement is met, tax will be chargeable irrespective of the fact that actually the amount charged from a particular customer is less than ₹ 1,000/-. The tax will also be charged on the gross amount paid or payable for the value of the service.

Finance Minister has announced 50% abatement from the value of service. Details of the exemption will be announced at the time when the levy is operationalized after the enactment of the Finance Bill.”

5.1.8 The following points are to be noted.

- (i) Hotel room rent will not only attract luxury tax but also service tax.
- (ii) It appears hotels with room tariff less than ₹ 1,000/- per day would be exempted.

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- (iii) The effective rate of service tax would be 5.15% on account of 50% abatement.
- (iv) If a guest uses the restaurant, the restaurant bill presumably would be subject to 70% abatement and not 50% abatement.
- (v) Where the guest room tariff includes free breakfast it appears the 50% abatement would apply.

EXPANSION OF SCOPE OF EXISTING SERVICES

5.2 Scope of 7 existing services expanded

Authorized Service Station's Services – Scope enlarged

- 5.2.1 Presently, any service provided by a service station or centre authorized by any motor vehicle manufacturer is liable to pay service tax on any repair, reconditioning or restoration of motor cars, light motor vehicles and two wheeled motor vehicles. The Bill seeks to widen the scope of this service to cover –
- (a) Services provided by any person i.e. whether authorized service station or otherwise;
 - (b) All 'motor vehicles', other than vehicles meant for 'goods carriage' and three-wheeler scooter autorickshaws; and
 - (c) Not only repair, re-conditioning or restoration services but also services of 'decoration' and any other related services.
- 5.2.2 In this regard it is pertinent to note that the term 'motor vehicle' is defined as per section 2(28) of the Motor Vehicles Act, 1988 which reads as under:

“ 'Motor vehicle' or 'vehicle' means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.”

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Thus any repair, reconditioning or restoration of buses would also now be covered.

Life Insurance business – services now fully subjected to service tax

5.2.3 Presently life insurance companies pay service tax on the risk component of the premium. Further, Rule 6(7A) of Service Tax Rules, 1994 provides an option to the life insurance companies to pay 1% of the premium towards discharge of their service tax liability. Such an option is not available in cases where –

- (a) the entire premium paid by the policy holder is only towards risk cover in life insurance; or
- (b) the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

5.2.4 The Bill seeks to amend the clause relating to the taxable service provided by life insurance companies by deleting the restriction of levy of service tax only on the risk component of the premium. Thus, service tax is sought to be levied on the entire premium collected by life insurance companies. Normally, the insurance premium consists of four components viz., towards risk cover, towards expense, towards commission and towards investment. The Explanatory Memorandum, in this regard states as follows:

“Rule 6(7A) of the Service Tax Rules, 1994 is being amended to provide that that an insurer carrying on life insurance business shall have the option to pay tax –

- (a) on the amount of gross premium charged from a policy holder reduced by the amount allocated for investment, where the breakup of the amount allocated for investment is shown separately to the policy holder; or
- (b) on an amount calculated @ 1.5% of the gross amount of premium charged from a policy holder in cases other than (a) above;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Finance Act, 1994.

Such option shall not be available in cases where the entire premium paid by the policyholder is only towards risk covered in life insurance.

[The above change will come into effect from a date to be notified, after the enactment of the Finance Bill, 2011]”.

- 5.2.5 Thus, in effect now service tax would be payable on the portion of the premium attributable to risk cover, expenses and commission but would exclude the investment portion or in the alternative a composition rate of 1.5% on the gross amount of premium would be applicable.

Club or Association Services

- 5.2.6 The scope of the service is proposed to be expanded to include service provided to non-members as well. This amendment is well explained by the TRU Circular –

“Services provided by a club or association to its members are already subjected to tax since 2005. When a member avails the facilities for his guest, he is already covered by the existing definition as the services are paid for by the member and not by the guest. However a number of clubs or associations allow non-members to use their facilities in their own capacity for a separate charge. Clubs also entertain members of other affiliated clubs. Such services are proposed to be brought within the revised definition by providing that not only such services provided to members would be liable for service tax but also such services provided to other persons would also be liable to service tax”.

Legal Consultancy Services

- 5.2.7 The Finance Act, 2009 introduced service tax on legal consultancy services. This, service tax is now applicable on all legal services except in the following cases:

- (i) Legal Consultancy services provided to an individual.
- (ii) Legal Consultancy services provided by an individual advocate.
- (iii) Legal service of appearance before any court/ Tribunal/ authority.

- 5.2.8 The scope of the existing service is being expanded by deleting some of the exclusions and including the following legal services within the ambit of service tax:

- (i) Services of advice, consultancy or assistance provided by a business entity to all persons including individuals;
- (ii) Representational services [before any court/Tribunal/ authority] provided by any person to a business entity; and

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- (iii) Services provided by arbitrators to business entities.

Thus the following legal services would be outside the levy of service tax–

- (a) All legal services provided by an individual to another individual; and
- (b) Representational services provided by a business entity to individuals.

5.2.9 In this regard it may be noted that the representational services provided by lawyers/advocates would be liable to service tax if provided to persons other than individuals but the same services provided by chartered accountants/cost accountants/company secretaries would not be liable for service tax.

Commercial Training or Coaching Services

5.2.10 Presently, commercial training or coaching services provided by a commercial training or coaching service centre is liable for service tax. However such centre does not include –

- (i) preschool coaching and training centre; or
- (ii) any institution or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law.

Thus, the exclusion is *qua* the centre and not *qua* the course / service. Hence if such centres provide unrecognized education courses such courses would also be outside the ambit of service tax. The Bill seeks to delete the above exclusions from the definition of the commercial training or coaching centre. However, the TRU Circular provides assurance in Para 3.2 that –

“Suitable exemption will be given after the enactment of the Finance bill to preschool coaching and training and to coaching or training relating to educational qualifications that are recognized by law”.

5.2.11 Thus, henceforth all unrecognized educational courses would be liable for service tax irrespective of who provides the service.

Business Support Services

5.2.12 Presently, Business Support Services includes within its fold several types of outsourced services including *inter alia* “operation assistance

for marketing". The Bill seeks to expand the scope of the service by substituting the words "operational or administrative assistance in any manner" for the words 'operation assistance for marketing'. Thus the scope of this part of Business Support Service would not be restricted to only marketing based services but would also include administrative services. As it is the definition of Business Support Services was very wide, now it would become even wider.

5.2.13 The TRU Circular explains the amendment as under -

“5.1 The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves but sometimes find it economical or otherwise worthwhile to outsource.

5.2 The words “operational and administrative assistance” have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by section 65A”.

Health Services

5.2.14 The Finance Act, 2010 introduced service tax for the first time on health services but in a very limited way i.e. by taxing the following health services provided by a hospital, nursing home or a multi-speciality clinic—

- (i) Health check up or **preventive** care services provided to an employee of any business entity, payment for which is made by the business entity directly to the hospital or medical establishment.
- (ii) Health check up or **treatment** to a person covered by health insurance scheme, payment for which is made directly by the insurance company to the hospital or medical establishment.

5.2.15 The Bill seeks to bring virtually the entire range of health services under the ambit of service tax. The Bill proposes to levy service tax on –

- (i) Health services provided by a '**clinical establishment**';
- (ii) Health services provided by doctors, who are not employees of a clinical establishment, from the premises of a 'clinical establishment'.

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5.2.16 “Clinical establishment” has been defined to mean –

- (i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine but having:
 - (a) the facility of central air-conditioning either in whole or in part of its premises; and
 - (b) more than 25 beds for in-patient treatment at any time during the financial year.
- (ii) Any independent entity or an entity which is part of any establishment referred to in point (i) above, which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment.

A clinical establishment would exclude an establishment owned or controlled by –

- (a) the Government; or
- (b) a local authority.

5.2.17 Thus, the following health services would be liable for service tax :

- (i) Any service provided by a hospital, Nursing home, etc. having the facility of central air-conditioning in any part of the establishment and having more than 25 beds for in-patient treatment at any time of the year;
- (ii) Diagnostic services provided by any establishment with the aid of laboratory or medical equipment; and
- (iii) Health-related services provided by doctors, not being employees, from the premises of a clinical establishment.

5.2.18 The TRU Circular has clarified that –

- (a) Establishment under the ownership or control of government or a local authority including Primary Health Centre and ESIC hospital, autonomous medical institutes set up by the government by a special Act of Parliament are all outside the levy of service tax.

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- (b) The exemption notification for 50% exemption from the value of this service as announced by the Finance Minister will be issued when the new levy is enacted.

Thus, the effective rate of service tax would be 5.15%.

5.2.19 *Service tax on health service would certainly be a toxic dose [and not intoxicating at all] considering that in most countries health services are not taxed and also the State takes care of social security measures! Thus, this levy would make the Government more wealthy but the citizens less healthy and wealthy!*



V. SALES TAX

1. Amendment in Central Sales Tax Act,1956

Section 15 of the CST Act,1956 prescribes restrictions and conditions in regard to taxation of declared goods. By clause (a) of section 15 it is provided that the rate of tax on declared goods should not exceed 4%. The said rate is proposed to be enhanced to 5%. The amendment will come into effect after the Finance Bill becomes Act. After the amendment has come into operation the States will be entitled to levy Sales Tax on the declared goods at 5%.

2. Amendment in First Schedule to Additional Duties of Excise (Goods of Special Importance) Act,1957

As per prevailing understanding, the State Governments are not entitled to levy sales tax on the goods, which are liable to additional duty under above Act. The major items of the same are sugar and fabrics. Now it is proposed to delete the Tariff headings relating to sugar and fabrics from the above Act. This will enable the State Governments to levy sales tax/VAT on above items. This amendment will be effective when the Finance Bill becomes Act.

3. Implementation of GST

The Finance Minister in the Budget Speech has stated that the differences amongst States on account of Implementation of GST are narrowed down and the Constitutional Amendment Bill will be presented in this Parliament session. However no fixed date for implementation is announced.

